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**CLARK COUNTY  
STAFF REPORT**

**DEPARTMENT/DIVISION:** Environmental Services / Sustainability and Outreach / Solid Waste Program

**DATE:** August 20, 2013

**REQUEST:** Adopt a Resolution authorizing the County Administrator to File a Complaint and Execute a Consent Decree in Clark County Superior Court regarding decommissioning Rufener Landfill. Further, authorize the County Administrator to execute any other documents necessary to complete the project in the County's best interest.

**CHECK ONE:**  Consent  Hearing  Chief Administrative Officer

**BACKGROUND:** Clark County regulates landfills in the county by authority of Washington Department of Ecology.

In 1988, the Rufener Landfill was developed and operated by the Boise Cascade Paper Group Vancouver Mill. Material disposed of in the landfill during this time was composed primarily of clarifier solids recovered from the mill's on-site wastewater treatment facility. From 1997 to 2001, the landfill remained in active status but was not operational. In 2001, ownership of the property transferred from Boise Cascade Corporation to the Hough Foundation, a not-for-profit corporation. In 2004, Hough Foundation submitted an application to Clark County Public Health to convert the Rufener Landfill to a construction, demolition and land clearing landfill. In 2006, the application was withdrawn and the solid waste handling permit expired because the owner did not provide the mandatory financial assurance. The landfill has remained out of compliance since 2006 due to expiration of the solid waste handling permit.

In 2009, the owner submitted a proposal to the county to redevelop the property as a light industrial park by decommissioning the landfill. The proposed project would involve removing materials in the landfill, blending them with clean fill and spreading the mixture over 43 acres on site. A Shoreline Management permit was obtained for the project. Financial setbacks prevented the project from continuing. The property changed ownership again, allowing the project to move forward.

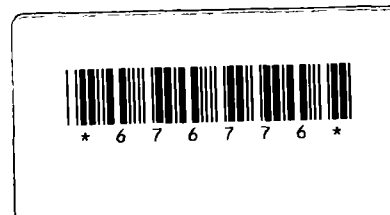
The Consent Decree formalizes the responsibilities and actions of all the parties involved with the property.

**COMMUNITY OUTREACH:** The Solid Waste Advisory Commission conducted two separate public hearings in regards to the respective permit applications. The City of Vancouver held a public hearing for the Shoreline Management permit application.

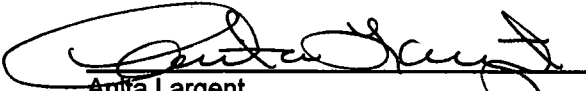
**BUDGET AND POLICY IMPLICATIONS:** Through the execution of this Consent Decree, Public Health will receive payment in the amount of \$32,614 for delinquent solid waste operating permit fees.

**FISCAL IMPACTS:**  Yes (see Fiscal Impacts Attachment)  No

**ACTION REQUESTED:** Adopt a Resolution authorizing the County Administrator to File a Complaint and Execute a Consent Decree in Clark County Superior Court regarding decommissioning Rufener Landfill. Further, authorize the County Administrator to execute any other documents necessary to complete the project in the County's best interest.



**DISTRIBUTION:** Please return the fully executed original Consent Decrees to the Department of Environmental Services.

  
Anita Largent  
Sustainability and Outreach Manager

  
Don Benton  
Environmental Services Director

APPROVED: Aug. 20, 2013  
CLARK COUNTY, WASHINGTON  
BOARD OF COMMISSIONERS

SR 161-13

Attachments: Resolution, Complaint, Consent Decree

# FISCAL IMPACT ATTACHMENT

## Part I: Narrative Explanation

I.A - Explanation of what the request does that has fiscal impact and the assumptions for developing revenue and costing information.

This Consent Decree formalizes the responsibilities and actions of all the parties in decommissioning the Boise Cascade landfill to light industrial property. This allows the project to move forward and results in the payment of delinquent solid waste operating permit fees to Public Health.

## Part II: Estimated Revenues

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Public Health - General Fund	\$32,614.00	\$32,614	\$0.00	\$0	\$0.00	\$0
Total:	\$32,614.00	\$32,614	\$0.00	\$0	\$0.00	\$0

II.A - Describe the type of revenue (grant, fees, etc.)

Past solid waste operating permit fees owed to Public Health by the property owner.

## Part III: Estimated Expenditures

III.A - Expenditures summed up

Fund #/Title	FTE's	Current Biennium		Next Biennium		Second Biennium	
		GF	Total	GF	Total	GF	Total
		\$0	\$0	\$0	\$0	\$0	\$0
Total:		\$0	\$0	\$0	\$0	\$0	\$0

III.B = Expenditure by object category

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Salary/Benefits	\$0	\$0	\$0	\$0	\$0	\$0
Contractual	\$0	\$0	\$0		\$0	
Supplies	\$0	\$0	\$0		\$0	
Travel			\$0		\$0	
Other controllables	\$0	\$0	\$0		\$0	
Capital Outlays			\$0		\$0	
Inter-fund Transfers			\$0		\$0	
Debt Service			\$0		\$0	
Total:	\$0	\$0	\$0	\$0	\$0	\$0

RESOLUTION NO. 2013- 08-04

A resolution related to approval of the decommissioning of a landfill and the filing of a Complaint and Consent Decree by Clark County in the Superior Court of the State of Washington that is accepted by the parties to conclude this matter and return the property to productive use in the private sector.

1           WHEREAS, in 1988, the Rufener Landfill (“Landfill”) was developed and operated until  
2 1997 by the Boise Cascade Paper Group Vancouver Mill and material deposited in the Landfill  
3 was primarily clarifier solids; and

4           WHEREAS, the Landfill was approved by the County through a Conditional Use Permit  
5 which required the owner to obtain a solid waste disposal permit; and

6           WHEREAS, from 1990 to 2006, the Department of Public Health (“Health”), as  
7 successor to the Southwest Washington Health District, issued limited purpose landfill permits to  
8 the Landfill; and

9           WHEREAS, in 2001, Boise Cascade Corporation as the owner of LaFrambois Properties,  
10 L.L.C. (“LaFrambois”), a Delaware limited liability company, the holder of fee title to the  
11 Landfill and the adjacent waste water lagoon (parcel #151957-0020) hereinafter the “Site,”  
12 transferred ownership of LaFrambois through certain transactions to the Hough Foundation, a  
13 Washington not-for-profit corporation; and

14           WHEREAS, in 2006, the limited purpose landfill permit expired and was not renewed;  
15 and

16           WHEREAS, since February 2006, the County Public Health Department made repeated  
17 demands for closure of the site and completion of the post-closure plans; and

18 WHEREAS, in 2009, Public Health received a landfill permit deferral application with a  
19 project proposal to decommission the landfill; and

20 WHEREAS, in 2009, this application was reviewed by the Solid Waste Advisory  
21 Commission in a Public Hearing with a recommendation to Public Health to approve the permit  
22 deferral, subject to certain conditions included in the Shorelines Permit; and

23 WHEREAS title to the Site is now vested in 2600 LLC, a Washington limited liability  
24 company ("2600"), by virtue of a deed in lieu of foreclosure on or about August 1, 2013; and

25 WHEREAS, it is in the best interest of the County to implement closure by  
26 decommissioning the landfill; and

27 WHEREAS, the Consent Decree declares the rights, status, responsibilities and  
28 obligations of the owners and compels performance of closure and post-closure activities (as  
29 provided for under the Shorelines and Grading Permits); now, therefore,

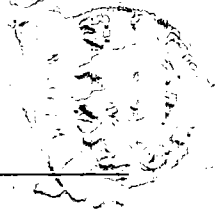
30 BE IT ORDERED, RESOLVED AND DECREED BY THE BOARD OF COUNTY  
31 COMMISSIONERS OF CLARK COUNTY, STATE OF WASHINGTON, AS FOLLOWS:

32 The Board of Clark County Commissioners authorizes the County Administrator to file  
33 suit and then enter into the Consent Decree in substantially the attached form with 2600 LLC and  
34 the Boise Cascade entities-- OfficeMax Incorporated, a Delaware corporation, formerly known  
35 as Boise Cascade Corporation, a Delaware corporation, Boise Cascade, L.L.C., a Delaware  
36 limited liability company; Boise Cascade Holdings, L.L.C., a Delaware limited liability  
37 company; Boise White Paper, L.L.C., a Delaware limited liability company -- to ensure the  
38 decommissioning of the landfill located at Parcel No. 151969000, previously known as the Boise  
39 Cascade Landfill.

ADOPTED this 20 day of August, 2013.

Attest

BOARD OF COMMISSIONERS  
FOR CLARK COUNTY



**Deputy** Isa Redline  
Clerk to the Board

By: [Signature]  
Steve Stuart, Chair

Approved as to form only:  
ANTHONY F. GOLIK  
Prosecuting Attorney

By: \_\_\_\_\_  
Tom Mielke, Commissioner

[Signature]  
Lawrence Watters  
Deputy Prosecuting Attorney

By: \_\_\_\_\_  
David Madore, Commissioner

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

CLARK COUNTY, WASHINGTON, a  
political subdivision of the State of  
Washington,

Plaintiff,

v.

OFFICEMAX, INCORPORATED, a Delaware  
corporation; BOISE CASCADECOMPANY, a  
Delaware corporation ; BOISE CASCADE  
HOLDINGS, L.L.C., a Delaware limited  
liability company; BOISE WHITE PAPER,  
L.L.C., a Delaware limited liability company;  
2600 LLC, a Washington limited liability  
company,

Defendants.

No. \_\_\_\_\_

**CONSENT DECREE**

**I. INTRODUCTION**

This Consent Decree ("*Decree*") is made and entered into by and between Clark County, Washington ("*Clark County*"); OfficeMax Incorporated, a Delaware corporation (formerly known as Boise Cascade Corporation, a Delaware corporation); Boise Cascade Company, , a Delaware corporation (formerly known as Boise Cascade, L.L.C., a Delaware limited liability company); Boise Cascade Holdings, L.L.C., a Delaware limited liability company; and Boise White Paper, L.L.C., a Delaware limited

1 liability company (collectively the "*Boise Entities*"); and 2600 LLC, a Washington  
2 limited liability company ("*2600*").

3 1. The Complaint in this action is being filed simultaneously with this  
4 Decree. No answers have been filed, and there has not been a trial on any issue of fact  
5 or law in this case. The Parties nevertheless wish to resolve the issues raised by the  
6 Complaint. In addition, the Parties agree that settlement of these matters without  
7 litigation is reasonable and in the public interest and that entry of this Decree is the most  
8 appropriate means of resolving these matters.

9 2. By signing this Decree, Clark County, the Boise Entities and 2600 agree  
10 to its entry and agree to be bound by its terms.

11 3. By entering into this Decree, the Parties do not intend, except as  
12 expressly provided herein with respect to the Boise Affiliates, to discharge any person  
13 who is not a Party from any liability they may have with respect to the matters alleged  
14 in the Complaint. The Parties retain the right to seek reimbursement, in whole or in  
15 part, from any liable persons (other than the Parties and the Boise Affiliates) for sums  
16 expended under this Decree, and Clark County retains the right to initiate enforcement  
17 action against any such person.

18 4. This Decree shall not be construed as an admission of any fact or proof  
19 of liability or responsibility for the closure of, solid wastes at, or cost of compliance at  
20 the Site (as hereinafter defined) or any other fact or claim set out in the Complaint.  
21 However, the Boise Entities and/or 2600 shall not challenge the jurisdiction of Clark  
22 County in any proceeding to enforce this Decree.

23 5. The Court is fully advised of the reasons for entry of this Decree, and  
24 good cause having been shown, it is hereby ORDERED, ADJUDGED, AND  
25 DECREED as follows:



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**II. AUTHORITY, JURISDICTION AND VENUE**

This Court has jurisdiction over the subject matter and over the parties pursuant to RCW 2.08.010. Venue is proper in Clark County pursuant to RCW 4.12.025.

**III. PARTIES BOUND**

This Decree shall apply to and be binding upon the signatories to this Decree. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Decree and to execute and legally bind such Party to comply with the Decree. The Boise Entities and 2600 each agree to undertake the actions required of them by the terms and conditions of this Decree. 2600 shall provide a copy of this Decree to all agents, contractors and subcontractors retained to perform work required by this Decree and shall ensure that all work undertaken by such contractors and subcontractors will be in compliance with the Decree.

**IV. DEFINITIONS**

Whenever terms listed below are used in this Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply solely for purposes of this Decree:

“2600” means 2600 LLC, a Washington limited liability company, the current owner of the Site.

“Bond” means that to be issued by the Surety.

“Boise Affiliates” means any present or past subsidiary, partner, officer, director, manager, member or shareholder of any of the Boise Entities, but excluding therefrom LaFrambois Properties, L.L.C. and its members, managers, and officers from and after the date of the donation of LaFrambois Properties, L.L.C. and the Site to the Community Foundation of Southwest Washington.

“Clark County Health Department” means the Clark County Health Department and its predecessor agency, the Southwest Washington Health District.

1           “*Boise Entities*” means OfficeMax Incorporated, a Delaware corporation,  
2 formerly known as Boise Cascade Corporation, a Delaware corporation, its present or  
3 past subsidiaries, partners, officers, directors, and shareholders; Boise Cascade  
4 Company, a Delaware corporation, formerly known as Boise Cascade, L.L.C., a  
5 Delaware limited liability company; Boise Cascade Holdings, L.L.C., a Delaware  
6 limited liability company; Boise White Paper, L.L.C., a Delaware limited liability  
7 company.

8           “*Complain*” means the Complaint filed in this action by Clark County.

9           “*Consent Decree*” or “*Decree*” means this Consent Decree and all appendices  
10 attached hereto. In the event of conflict between this Consent Decree and any appendix,  
11 this Consent Decree shall control.

12           “*Effective Date*” shall be the date upon which this Consent Decree is entered by  
13 the Court as recorded on the Court docket, or, if the Court instead issues an order  
14 approving the Consent Decree, the date such order is recorded on the Court docket.

15           “*Environmental Laws*” includes, but is not limited to the following, as they are  
16 now written or as they may be amended in the future: the Comprehensive  
17 Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C.  
18 § 9601, et seq., the Washington Model Toxics Control Act, RCW 70.105D, the Solid  
19 Waste Disposal Act/Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et  
20 seq., the Washington Solid Waste Management Act, Ch. 70.95 Revised Code of  
21 Washington, the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq., the Clean Water  
22 Act, 33 U.S.C. § 1251, et seq., and all applicable federal, state, and local laws,  
23 ordinances and regulations.

24           “*Escrow Holder*” is Chicago Title Company of Oregon, Commercial Escrow  
25 Division, 1211 SW Fifth Avenue, Suite 2130, Portland, Oregon 97204, attn: Malcolm  
26 Newkirk, Escrow No. 472513511150MN, and wire instructions as follows:

1 BANK: U.S. BANK, 205 ELLSWORTH SE, ALBANY, OREGON 97321  
2 ABA or ROUTING NUMBER: 123-000-220  
3 ACCOUNT NUMBER: 153695244860  
4 REFER TO ESCROW 472513511150MN  
5 CLIENT REFERENCE: Boise Cascade – 2600 LLC

6 “*Hough Entities*” means LaFrambois Properties, L.L.C., a Delaware limited  
7 liability company, but only after the donation of LaFrambois Properties, L.L.C. and the  
8 Site by the Boise Entities to the Community Foundation of Southwest Washington; the  
9 Hough Foundation, a Washington not-for-profit corporation; and Portside Lagoon and  
10 Landfill L.L.C., a Washington limited liability company.

11 “*Party or Parties*” means Clark County, each of the Boise Entities, and 2600,  
12 individually, or all of them collectively.

13 “*Portside*” means Portside Lagoon and Landfill, LLC, a Washington limited  
14 liability company.

15 “*Qualifying Expenses*” means expenses incurred for the performance of the  
16 work required by the Development Permits incurred after the date of the Decree’s entry  
17 with the Court, including the financial assurance requirement, surveying, engineering,  
18 legal, and permitting costs directly related to redeveloping the Site, current and  
19 delinquent real estate taxes, current and delinquent permit fees; plus the following  
20 expenses incurred prior to entry of the Consent Decree, hereinafter the “*Payables*”:  
21 \$30,000 to BergerABAM Inc. for engineering fees, \$14,194.21 to GeoDesign Inc. for  
22 environmental consulting, \$36,381.77 to Landerholm Law P.S. for legal services and  
23 \$32,614 to Clark County Health Department for fees.

24 “*Rufener Landfill*” means the existing landfill on the Site.

25 “*Site*” is consists of those parcels described in Exhibit A and identified by the  
26 following tax parcel numbers: 151957-002 and 151969-000, as shown generally on the  
map attached as Exhibit A-1.

“*Surety*” means Western Surety Company Co.

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**V. FINDINGS OF FACTS**

Being fully advised in the premises, the Court hereby finds the following facts:

**A. Property involved.**

6. The "Site" in Exhibit A-2, shows general features, including the landfill and lagoon.

7. The Site is zoned light industrial. Other similarly zoned properties are located adjacent to portions of the Site. The Port of Vancouver is to the west of the Site, and the City of Vancouver's lagoon is to the north of tax parcel 151957-002. A residential district, the Fruit Valley Neighborhood Association is roughly 200 feet to the east of the City of Vancouver's Lagoon.

8. Portions of the Site are within the 100-year flood plain of the Columbia River as shown on Exhibit A-3.

**B. Entities.**

9. Boise Cascade Corporation ("BCC") is a Delaware corporation (which is now named OfficeMax Incorporated) which operated certain facilities within Clark County, Washington.

10. On November 1, 2004, the legal name of BCC was changed to "OfficeMax, Incorporated" ("OMX").

11. Boise Cascade Holdings, L.L.C. ("BCH") is a Delaware limited liability company. Boise Cascade Company ("BCLLC"), a Delaware corporation, formerly known as Boise Cascade, L.L.C., a Delaware limited liability company is a subsidiary of BCH. Until February 22, 2008, Boise White Paper, L.L.C. ("BWP") was a wholly owned subsidiary of BCH.

12. LaFrambois Properties, L.L.C. ("LP") is a Delaware limited liability company.

1           13.    The Hough Foundation (“HF”) is a Washington not-for-profit  
2 corporation. HF is the sole owner of LP.

3           14.    Portside Lagoon and Landfill, LLC is a Washington limited liability  
4 company.

5           15.    Clark County is a Washington municipal corporation, and regulates solid  
6 waste management in Clark County.

7    **C.    Property Transactions.**

8           16.    On or about June 19, 1987, BCC leased the Site from Elmer Rufener and  
9 Marie Rufener.

10          17.    On February 12, 1999, the Rufeners granted BCC an option to purchase  
11 the 18.79 acres north of the Site (the “Option”).

12          18.    In 1999, BCC created LP.

13          19.    On February 17, 1999, the Elmer Rufener Credit Shelter Trust conveyed  
14 24.49 acres of the Site to LP. This 24.49 acres of property consisted of the southern  
15 approximate 10 acres comprising the limited purpose landfill and the easterly adjacent  
16 14.5 acres on which the waste water lagoon is located. This 24.49 acre property,  
17 constitutes the Site.

18          20.    On February 19, 1999, BCC assigned its interest in the Option to LP.

19          21.    On June 29, 2001, BCC conveyed all of its interest in LP to the  
20 Community Foundation for Southwest Washington through a Donation of Property  
21 Agreement as a charitable donation. This transaction divested the Boise entities of the  
22 Site. The Community Foundation for Southwest Washington conveyed all of its  
23 interest in LP to the Hough Foundation. The Hough Entities were the owners or  
24 operators of the limited purpose landfill since that date through LP until July 31, 2013.

1           22. The Hough Entities have claimed that the purpose for which they  
2 acquired the Site was to develop it for the benefit of certain charitable organizations in  
3 southwest Washington.

4           23. The Option was exercised by LP. This added approximately 18.79 acres  
5 to its holdings. Upon information and belief, LaFrambois Properties, L.L.C borrowed  
6 approximately \$1.0 million dollars from Riverview Bank to finance the purchase (the  
7 "*Loan*"). The Loan was secured by the Site and the 18.79 acres north of the Site.

8           24. LP defaulted on the Loan and Riverview Bank commenced foreclosure.  
9 2600 succeeded to Riverview Bank's interest in the Loan. On or about July 31, 2013,  
10 2600 acquired title to the Site through a deed in lieu of foreclosure.

11 **D. Permitting and Compliance History.**

12           25. In 1987, BCC applied to Clark County for a conditional use permit to  
13 construct and operate the Rufener Landfill to dispose of industrial waste consisting of  
14 clarifier solids and secondary wastewater treatment solids produced from the BCC  
15 paper mill. The conditional use permit was issued on February 5, 1988.

16           26. In 1989, BCC applied to the Clark County Health Department for a solid  
17 waste disposal permit. As part of that permit application, BCC submitted an operation  
18 plan and a closure and post-closure plan for the Rufener Landfill. Although the permit  
19 allowed BCC to construct a larger facility, the landfill is located only on the 10-acre  
20 parcel identified in Exhibit A as parcel 151969-000.

21           27. From 1990 to October 29, 2004, the Clark County Health Department  
22 annually renewed the limited purpose landfill permit in the ordinary course of business  
23 for the Rufener Landfill, showing BCC as the operator.

24           28. In 2006, the Clark County Health Department revised the landfill permit  
25 by naming the Hough Foundation facility owner, and Boise Cascade L.L.C., as facility  
26 operator. This permit expired February 28, 2006.

1           29.    The limited purpose landfill permits require financial assurance for  
2 completion of the closure and post-closure plans. Financial assurance was provided by  
3 BCC through October 29, 2004. On that date, Boise Cascade, L.L.C. was substituted  
4 for BCC in the irrevocable Letter of Credit provided as financial assurance. The Clark  
5 County Health Department returned the Letter of Credit on April 29, 2005, because  
6 Boise Cascade, L.L.C. and its subsidiary, BWP had demonstrated compliance with the  
7 financial test method of assuring performance of the closure and post-closure activities  
8 at the landfill.

9           30.    In 2004, Portside Lagoon and Landfill LLC applied for a permit to  
10 convert the Rufener Landfill to a construction, demolition and land clearing (“CDL”)  
11 landfill. The application was rejected in February 2006. No CDL landfill permit was  
12 issued.

13           31.    On February 17, 2006, the Clark County Health Department demanded  
14 the Boise Entities and some of the Hough Entities implement the closure and post-  
15 closure plans for the Rufener Landfill pursuant to WAC 173-350-400(6)(b), which  
16 requires owners and operators of landfills to implement closure plans after receipt of the  
17 final volume of waste to be deposited at that landfill.

18           32.    On or before December 18, 2007, Clark County prepared a lawsuit  
19 naming the Boise Entities and some of the Hough Entities, demanding implementation  
20 of closure and post-closure activities with respect to the Rufener Landfill. This suit was  
21 not filed with the Court.

22           33.    As the owner of the Site, the Hough Entities proposed to redevelop the  
23 Site together with the northerly 18 acres as a light industrial park. To that end, they  
24 received a Shoreline Management Permit (“*Shoreline Permit*”), (which includes a  
25 Shoreline Substantial Development Permit and Shoreline Conditional Use Permit) a true  
26 and correct copy is attached as Exhibit B and incorporated herein by reference. 2600 is

1 in the process of obtaining Grading and Deferral Permits under WAC 173-350-710(8)  
2 from Clark County, and a Grading Permit from the City of Vancouver. 2600, as  
3 successor in ownership to the Site and the northerly 18 acres, is working with the City  
4 and Clark County for the issuance of these permits.

5 34. The redevelopment plan includes decommissioning the landfill by  
6 removing the materials in the landfill,<sup>1</sup> blending them with clean fill, spreading the  
7 mixture over approximately forty-three (43) acres of the Site and the northerly 18 acres  
8 and then placing additional fill on top to raise the entire parcel to a depth of one to two  
9 feet above the 100-Year Flood Event. The Shoreline Permit requires the Hough Entities  
10 or their successor to ownership of the Site to provide appropriate financial assurance  
11 that the decommissioning will be completed in its entirety within the five (5)-year term  
12 of the Shoreline Permit.

#### 13 VI. WORK TO BE PERFORMED

14 35. 2600 agrees to perform all of the work required by the Grading Permit,  
15 to be issued by the City of Vancouver; the Deferral Permit to be issued by Clark  
16 County; and the Shoreline Permit. Such work is hereinafter referred to as the "*Project*".  
17 When issued, the Grading Permit will be attached to this Decree as Exhibit C and  
18 incorporated herein by reference. When issued, the Deferral Permit will be attached to  
19 this Decree as Exhibit D and incorporated herein by reference. When issued, Exhibits  
20 B, C, and D will be collectively the "*Development Permits*".

21 36. Surety will issue the Bond for completion and performance in form and  
22 substance satisfactory to Clark County for \$2.8 million, which bond shall not be

23  
24 <sup>1</sup> The known materials in the landfill are wastewater treatment solids from the operation generated at the  
25 former mill and in the wastewater treatment lagoon. The primary components of the solids are clay  
26 (50%) and wood fiber (50%). The solids also contain very low levels of polychlorinated dibenzodioxins  
(dioxins). These contaminants were created in the paper bleaching process. The levels present here are  
approximately 12.5 parts per trillion ("ppt"), only 1.5% of the accepted level of 875 ppt for industrial  
areas. See WAC 173-340-745.



1 reduced or exonerated until all work required by the Development Permits is completed.  
2 Provided the City of Vancouver and Clark County approve of the Bond, they accept this  
3 Bond as the "*Financial Assurance Agreement*" described in the Shoreline Permit.

4 37. Within 15 business days of the Effective Date, the Boise Entities shall  
5 jointly irrevocably pay Nine Hundred Fifty Thousand and No/100 Dollars  
6 (\$950,000.00) (the "*Boise Funds*") to the Escrow Holder to assist 2600 in funding its  
7 compliance with the Development Permits. Provided that the Bond and those  
8 Development Permits have issued so that work may lawfully commence on the Site as  
9 contemplated by this Decree, then (a) 2600 may use the Boise Funds at any time, in any  
10 amount and without notice to any party, but only for payment of Qualifying Expenses;  
11 and (b) Escrow Holder shall promptly pay the Payables directly to the obligees thereon.  
12 In the event that the Bond and those Development Permits have not issued so that work  
13 may lawfully commence on the Site as contemplated by this Decree by December 31,  
14 2014, then the Boise Entities may petition the Court to set aside this Decree and for  
15 return of the Boise Funds from the Escrow Holder.

16 38. Upon payment of the Boise Funds as provided herein, 2600 shall hold  
17 harmless, defend (by counsel reasonably satisfactory to the party to be defended) and  
18 indemnify each and all the Boise Entities and Boise Affiliates for any claims, legal  
19 actions, administrative actions, losses, costs or expenses which arise out of or result  
20 from the performance of the work required by the Development Permits, including the  
21 Financial Assurance requirement, surveying, engineering, permitting and other costs  
22 directly related to the performance of said work; and any violations of Environmental  
23 Laws caused directly or indirectly by 2600's action or inaction. 2600's indemnity  
24 herein will be or is secured by the Bond. Work required by the Development Permits  
25 shall be complete when the Clark County has issued a "no further action" letter or other  
26 substantially similar evidence that the work is complete.

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**VII. 2600'S RELEASE OF CLAIMS**

39. 2600 hereby releases and agrees not to assert any and all claims, legal actions, and administrative actions, known or unknown, now or hereafter held by any or all of them against the Boise Entities or the Boise Affiliates, or any of them, which may currently exist under or which may hereafter arise out of or result from or be connected directly or indirectly to the Boise Entities' lease, ownership, use, or transfer of the Site. The foregoing release is contingent upon the payment of the Boise Funds in accordance with the provisions hereof.

**VIII. COVENANT NOT TO SUE**

40. In consideration of the Boise Entities' compliance with the terms and conditions of this Decree, Clark County hereby releases and covenants not to institute legal or administrative actions against the Boise Entities or Boise Affiliates, and/or any of them which may currently exist under or which may hereafter arise out of or result from or be connected directly or indirectly to the Boise Entities' lease, ownership, use or transfer of the Site regarding any issues resulting from or arising out of the Rufener Landfill or the Site, including but not limited to any issues involving a release or threatened release of hazardous substances from the Site.

41. This Covenant Not to Sue shall have no applicability whatsoever to criminal liability, or to liability of potentially liable persons other than the Boise Entities and the Boise Affiliates.

42. If Clark County discovers any facts after the time of entry of this Consent Decree, excluding facts Clark County knew or should have known prior to the time of entry of this Consent Decree, and such facts present a previously unknown threat to human health or the environment, the Court may amend this Covenant Not to Sue after notice to the Boise Entities and an opportunity to be heard if the Court finds

1 that the Boise Entities knew or should have known and that Clark County did not know  
2 or should not have known of such fact at the time of its entry into this Decree.

3 43. Clark County's Covenant Not to Sue under Decree Article VIII does not  
4 apply to or preclude any action by Clark County to enforce the payment of the Boise  
5 Funds against the Boise Entities or any action against 2600 relating to the  
6 administration of the Development Permits or oversight of the work performed  
7 thereunder.

8 44. This Covenant shall be effective upon entry of this Decree and when the  
9 Boise Entities file and serve upon the other Parties proof of the payment of the Boise  
10 Funds required by the provisions hereof.

11 **IX. DURATION OF THE DECREE AND RETENTION OF JURISDICTION**

12 45. This Decree shall remain in effect until dismissed by this Court. To  
13 terminate this Decree as to 2600, 2600 must move this Court to do so and must submit  
14 from the City of Vancouver written confirmation, satisfactory to the Court that the  
15 requirements of the Grading Permit have been satisfactorily completed; the Restrictive  
16 Covenant, attached hereto as Exhibit E has been executed and recorded; and Clark  
17 County has provided or issued a written concurrence and statement affirming that the  
18 Rufener Landfill is considered decommissioned and closed and that no further actions  
19 are necessary at the Site as required by the Development Permits.

20 46. The Boise Entities may move this Court to terminate this Decree as to  
21 the Boise Entities upon a showing satisfactory to the Court that the required sums have  
22 been paid to the Escrow Agent.

23 47. Notwithstanding full or partial termination of the Decree by this Court,  
24 the Indemnity contained in paragraph 38 herein, the release contained in paragraph 39  
25 herein and the Covenant Not to Sue contained in paragraphs 40 through 44 herein shall  
26 survive such termination and shall remain enforceable by and against the Parties.

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**X. AMENDMENT OF THE DECREE**

48. This Decree may only be amended by a written stipulation among the Parties that is entered by the Court, or by order of the Court. Such amendment shall become effective upon entry by the Court. Any Party whose interests are affected by a proposed amendment must be provided notice of any proposed amendment and the proposed written stipulation. The Parties agree that any amendment to this Decree shall not be unreasonably withheld by any Party to the Decree; provided that no Party shall be required to agree to the termination or materially adverse modification of any payment by the Boise Entities, indemnification, release, or covenant not to sue extended to it hereunder.

49. Any Party proposing an amendment to this Decree shall submit its proposal to each of the other Parties. Each of the other Parties shall indicate its approval or disapproval in a timely manner after the request for amendment is received. If the proposed amendment represents a substantial change to this Decree, Clark County will provide public notice and opportunity for comment. Reasons for disapproval of a proposed amendment by any Party shall be stated in writing.

50. Nothing herein shall be construed to limit or prejudice Boise Entities right to petition the Court as provided under Section 37.

**XI. ATTORNEYS' FEES AND COSTS**

51. Each party shall bear its own attorneys' fees and costs incurred in connection with this Decree and the Complaint.

**XII. EFFECTIVE DATE OF THE DECREE**

52. This Decree is effective upon the date it is entered by the Court.

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**XIII. ORDER**

Based upon the above facts, this Decree is hereby approved and entered this

\_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Judge, Clark County Superior Court

Agreed and approved for Entry:

CLARK COUNTY, WASHINGTON

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Print Name:

Attorney for Clark County

\_\_\_\_\_  
Date:

Agreed and approved for Entry:

OFFICEMAX INCORPORATED

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Print Name:

Attorney for OfficeMax, Incorporated.

\_\_\_\_\_  
Date:

1 Agreed and approved for Entry:

2 BOISE CASCADE COMPANY

3

4 \_\_\_\_\_  
Print Name: \_\_\_\_\_

5 Title: \_\_\_\_\_

6

7 Date: \_\_\_\_\_

8

9 \_\_\_\_\_

10 Print Name: \_\_\_\_\_

11 Attorney for Boise Cascade Company

12 Date: \_\_\_\_\_

13 Agreed and approved for Entry:

14 BOISE CASCADE HOLDINGS, L.L.C.

15

16 \_\_\_\_\_

17 Print Name: \_\_\_\_\_

18 Title: \_\_\_\_\_

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20 Date: \_\_\_\_\_

21

22 \_\_\_\_\_

23 Print Name: \_\_\_\_\_

24 Attorney for Boise Cascade Holdings, L.L.C.

25 Date: \_\_\_\_\_

26

27 Agreed and approved for Entry:

28 BOISE WHITE PAPER, L.L.C.

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31 Print Name: \_\_\_\_\_

32 Title: \_\_\_\_\_

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34 Date: \_\_\_\_\_

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Print Name: \_\_\_\_\_  
Attorney for Boise White Paper, L.L.C.

Date: \_\_\_\_\_

Agreed and approved for Entry:

2600 LLC

Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_  
Attorney for 2600, LLC

**EXHIBIT LIST**

- A, A-1, A-2, A-3– Legal Description, Map, Aerial, Flood Plain
- B – Shoreline Management Permit
- C – Anticipated Grading Permit
- D – Anticipated Deferral Permit
- E – Restrictive Covenant

## EXHIBIT A

### Parcel I

A portion of the Charles Proulx Donation Land Claim and the Francis LaFrambois Donation Land Claim lying within Sections 16, 20 and 21, Township 2 North, Range 1 East of the Willamette Meridian, Clark County, Washington, being more particularly described as follows:

COMMENCING at the Northeast corner of the George and Abigail Malick Donation Land Claim; thence North 56°09'46" West, along the North line of said Malick Donation Land Claim and the North line of the Charles Proulx Donation Land Claim, 2305.65 feet; thence South 11°40'50" West 31.96 feet to the Northwest corner of that tract of land leased by the City of Vancouver, as described in document recorded under Auditor's File No. 7903080070, Deed Records, Clark County, Washington, said point being the TRUE POINT OF BEGINNING of the tract herein described; thence South 11°40'50" West, along the West line of said City of Vancouver tract, 1452.41 feet to a ½ inch diameter iron rod; thence North 78°14'56" West, 525.00 feet to a ½ inch diameter iron rod; thence North 11°40'50" East, parallel with the West line of said City of Vancouver tract, 1665.55 feet to a ½ inch diameter iron rod; thence South 56°09'46" East, parallel with the North line of said Proulx Donation Land Claim, 566.86 feet to the TRUE POINT OF BEGINNING.

TOGETHER with that portion of the vacated LaFrambois Road Extension, vacated under Final Order of Vacation recorded October 27, 1971, under Auditor's File No. G 587418, records of Clark County, Washington, which would attach by operation of law.

EXCEPT any portion thereof conveyed to Clark County under Auditor's File No. 9007110005.

ALSO EXCEPT any portion thereof lying within the right of way of La Frambois Road.

### Parcel II

A tract of land in the West half of Section 21, Township 2 North, Range 1 East of the Willamette Meridian, Clark County, Washington, being more particularly described as follows:

COMMENCING at the Northeast corner of the George and Abigail Malick Donation Land Claim; thence North 56°09'46" West, along the North line of said Malick Donation Land Claim and the North line of the Charles Proulx Donation Land Claim, 2305.65 feet; thence South 11°40'50" West 31.96 feet to the Northwest corner of that tract of land leased by the City of Vancouver, as described in document recorded under Auditor's File No. 7903080070, Deed Records, Clark County, Washington; thence South 11°40'50" West, along the West line of said City of Vancouver tract, 1452.41 feet to a 1/2 inch diameter iron rod, said point being the TRUE POINT OF BEGINNING of the parcel herein described; thence North 78°14'56" West 525.00 feet to a 1/2 inch diameter iron rod; thence South 11°40'50" West, parallel with the West line of said City of Vancouver tract, 610.99 feet to the North right-of-way line of Lower River Road (being 75.00 feet from centerline); thence Southeasterly along the arc of a 1935.00 foot radius curve, concave Southerly, through a central angle of 02°08'11", an arc distance of 74.01 feet; thence South 35°36'52" East, continuing along said right-of-way line, 450.01 feet; thence

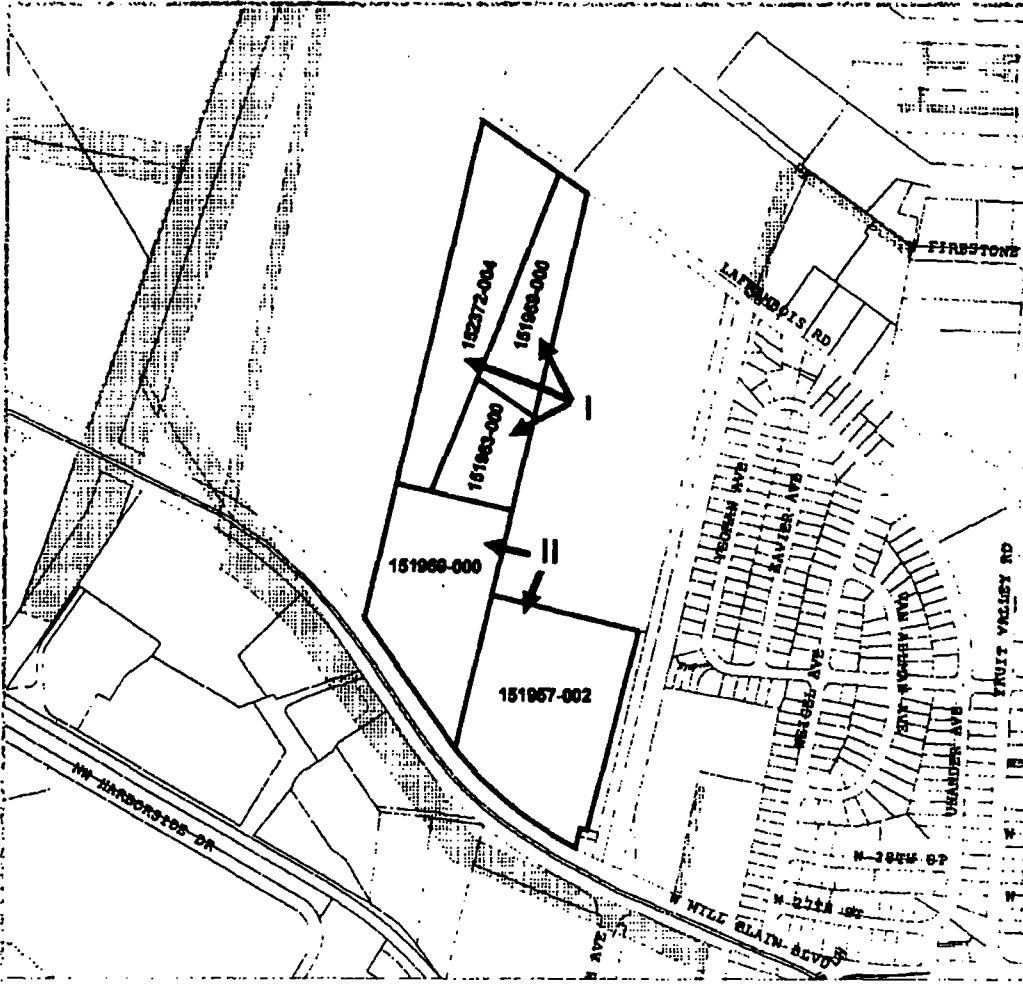


**EXHIBIT A**

continuing along said centerline, along the arc of a 1835.00 radius curve, concave Northerly through a central angle of  $28^{\circ}58'28''$ , an arc distance of 927.96 feet; thence North  $11^{\circ}40'50''$  East, parallel with the West line of said City of Vancouver tract, 75.00 feet; thence South  $78^{\circ}19'10''$  East 30.00 feet; thence North  $11^{\circ}40'50''$  East 940.00 feet to the Southeast corner of said City of Vancouver tract; thence North  $78^{\circ}19'10''$  West, along the South line of said City of Vancouver tract, 700.00 feet to the Southwest corner thereof; thence North  $11^{\circ}40'50''$  East, along the West line of said City of Vancouver tract, 383.83 feet to the Point of Beginning.

**EXCEPT** any portion thereof lying within the right of way of NW Lower River Road.

EXHIBIT A-1



NW 1/4 of Section 21 T2R1E WM

- Major Roads
- State Route
- Interstate
- Arterial Roads
- Roads
- Easements

Chicago-Fidelity Title Insurance Company



Plat Date: May 2, 2013  
 Map produced by: Wenona Peterson  
 Information shown on this map was collected from several sources. Neither Clark County or the agency producing this document accept responsibility for any inaccuracies that may be present.



(Scale 1:4856.93) 200 0 200 400 600 800 Feet

EXHIBIT A-2



152372-004

151959-000

151963-000

151957-002

151969-000





STATE OF WASHINGTON  
 DEPARTMENT OF ECOLOGY  
 PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

RECEIVED

MAR 24 2009

DEVELOPMENT REVIEW  
 SERVICES

March 16, 2009

Portside Lagoon & Landfill, LLC  
 1111 Main ST Ste 700  
 Vancouver WA 98660

I certify that I mailed a copy of this document to the persons and addresses listed herein, postage prepaid, in a receptacle for United States mail in Lacey, Washington, on  
March 18, 2009  
 Signature Hanna Nicholson

**Subject:** City of Vancouver Permit #SHL2008-00007  
 PORTSIDE LAGOON & LANDFILL LLC - Applicant  
 Shoreline Substantial Development and Conditional Use Permits  
 # 2009-SW- 03482 - CONCURRENT FILING

Dear Applicant:

**Purpose:** Notification of Receipt of Concurrent Permit Filings and Approval of Conditional Use Permit

On 2/17/2009, the Department of Ecology received notice that City of Vancouver approved your application for a Substantial Development Permit and a Shoreline Conditional Use Permit. Your permit authorizes the placement of fill within the 100-year floodplain and development of a light industrial park consisting of 5 buildings and associated infrastructure. An existing industrial lagoon and landfill (associated with a former Boise Cascade mill) on a portion of the site will be removed. Work will occur within shoreline jurisdiction of Vancouver Lake/Columbia River (Chapter 90.58, RCW).

**Shoreline Substantial Development Permit:**

Before you begin activities authorized by this permit, the law requires you to wait at least 21 days from the date (2/17/2009) we received the decision letter from Vancouver. This waiting period allows anyone who may disagree with any aspect of this permit, including you, to appeal the decision to the state Shorelines Hearings Board.

You must wait for the conclusion of an appeal before you can begin the activities authorized by this permit. The appeal period ended March 10, 2009.

### Shoreline Conditional Use Permit:

By law, Ecology must review all Conditional Use Permits for compliance with the following:

- The Shoreline Management Act (Chapter 90.58 RCW)
- Ecology's Conditional Use Permit approval criteria (Chapter 173-27-160 WAC)
- The City of Vancouver Shoreline Master Program

After reviewing for compliance, Ecology must decide whether to approve, approve with conditions, or disapprove a Conditional Use Permit.

### Our Decision:

Ecology approves your Conditional Use Permit provided your project complies with the conditions required by City of Vancouver. **Please note that other federal, state, and local permits may be required in addition to this shoreline permit.**

### What Happens Next?

Before you begin activities authorized by this permit, the law requires you to wait at least 21 days from the mailing date of this letter (see certification above). This waiting period allows anyone (including you) who disagrees with any aspect of this permit, to appeal the decision to the state Shorelines Hearings Board. You must wait for the conclusion of an appeal before you can begin the activities authorized by this permit.

The Shorelines Hearings Board will notify you by letter if they receive an appeal. We recommend, however, you contact the Shorelines Hearings Board before you begin permit activities to ensure no appeal has been received. They can be reached at (360) 459-6327 or <http://www.eho.wa.gov>.

If **you** want to appeal this decision, you can find appeal instructions (Chapter 461-08 WAC) at the Shorelines Hearings Board website above. They are also posted on the website of the Washington State Legislature at: <http://apps.leg.wa.gov/wac>.

If you have any questions, please contact Kim Van Zwalenburg at (360) 407-6520.

Sincerely,



Perry J Lund, Unit Manager  
Shorelands and Environmental Assistance Program

PJL:KV:dn

cc: Jon Wagner, City of Vancouver  
Brian Carrico, BERGER/ABAM Engineering, Inc.

**BEFORE THE LAND USE HEARING EXAMINER  
OF CITY OF VANCOUVER, WASHINGTON**

Regarding an application by Portside Lagoon and Landfill, ) **FINAL ORDER**  
LLC for shoreline substantial development and shoreline ) **PRJ2008-01104<sup>1</sup>**  
conditional use permits to prepare the property for light ) **(Portside Lagoon**  
industrial development in the City of Vancouver, Washington) **and Landfill)**

**A. SUMMARY**

1. Portside Lagoon and Landfill, LLC (the "applicant") requests approval of shoreline substantial development permits and shoreline conditional use permits to place fill within the 100-year flood plain to allow for the development of the subject property as light industrial as shown in the site development plan, Drawing Sheet C-1 of Exhibit 6, through a future site plan review approval. The site plan includes 5 buildings ranging in size from 85,200 to 302,400 square feet. The total building area proposed for the 5 buildings is 895,200 square feet. The development is proposed on a 43.05-acre property located northwest of the intersection of 26th Avenue and Northwest Lower River Road. The legal description of the property is Tax Lots 151957-002, 151959-000, 151963-000, 151969-000, 152372-004 and 151957-000, Sections 20 and 21 Township 2N, Range 1E of the Willamette Meridian (the "site"). The site and abutting properties to the north, south, southeast and west are zoned IL (Light Industrial). Properties to the northeast are zoned R-9 (Low Density Residential, 9 units per acre). The site is currently developed with a wastewater treatment lagoon and landfill containing wastewater treatment clarifier solids generated by Boise Cascade Corporation from 1989 through 1996. The applicant proposed to decommission the lagoon and landfill and fill the site to an elevation roughly two feet above the 100-year flood plain elevation for light industrial development. The applicant will incorporate the landfill material into the fill on the site.

2. Hearing Examiner Joe Turner (the "examiner ") conducted a public hearing to receive testimony and evidence about this application. City staff recommended approval of the application, subject to conditions of approval as amended at the hearing. See the Staff Report and Recommendation to the Hearing Examiner dated January 9, 2009 (the "Staff Report"). Representatives of the applicant testified in support of the application and accepted the findings and conditions in the Staff Report as amended without objections. A representative of the Fruit Valley Neighborhood association testified orally and in writing with questions and concerns about future industrial development on the site. Disputed issues or concerns in the case include the following:

a. Whether the proposal constitutes "speculative fill" that is prohibited by the Vancouver Shoreline Management Plan;

b. Whether and to what extent the proposed fill on the site will increase flood elevations in the area;

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<sup>1</sup> This application also includes Casefiles SHL2008-00007

c. Whether construction traffic will damage the existing levy east of the site;

d. Whether the potential impacts of industrial uses on the site are relevant to the approval criteria for this shoreline permit application;

e. Whether the site access and building heights are relevant to the approval criteria for this shoreline permit application; and

f. Whether the proposed fill and future industrial development pose a significant risk of air, water or ground contamination.

3. Based on the findings provided or incorporated herein, the examiner approves the application subject to the conditions at the conclusion of this final order.

### **B. HEARING AND RECORD HIGHLIGHTS**

1. The examiner received testimony at the public hearing about this application on January 20, 2009. All exhibits and records of testimony are filed at the City of Vancouver. The examiner announced at the beginning of the hearing the rights of persons with an interest in the matter, including the right to request that the examiner continue the hearing or hold open the public record, the duty of those persons to testify and to raise all issues to preserve appeal rights and the manner in which the hearing will be conducted. The examiner disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the examiner of selected testimony and evidence offered at the public hearing.

2. City planner Jon Wagner summarized the Staff Report and the applicable standards, described the proposed development on the subject property and showed photos of the site.

a. He argued that the proposal does not constitute “speculative fill,” which is prohibited by the Vancouver Shoreline Management Plan (the “VSMP”). Although the applicant has not applied for site plan approval at this time, the applicant submitted a site plan demonstrating how the applicant intends to develop the site. The shoreline permits include the proposed site plan. Therefore the applicant must develop the site consistent with this site plan or obtain City approval of an alteration of the shoreline permits through the City’s post development review process. The applicant could potentially fill the site pursuant to the shoreline permits and not complete the site plan approval process. However the applicant could do the same even if the City approved the site plan simultaneously with the shoreline permits. The development schedule is dependant on market demand. The applicant must fill the site in order to develop it. With the exception of the berm around the lagoon, the entire site is below the 100-year flood plain elevation. In order to develop this site with light industrial uses the site must be filled to an elevation above the 100-year flood plain or the buildings on the site must be elevated above the flood plain or waterproofed, which would make deliveries and outdoor storage more difficult.



b. He noted that the proposed fill will not have a significant impact on the flood elevation in the area. If all of the IL zoned property in the area were filled to the same level as the site it would increase the 100-year flood plain elevation by 0.35 inches. The fill associated with this specific project would increase the 100-year flood event by 0.01 feet (0.08 inches). In addition, the fill on this site will act as a dike or levy, potentially providing additional protection of the adjacent Fruit Valley neighborhood to the east.

c. He noted that the Clark County Health Department concluded that incorporation of the existing landfill material into the fill on the site will not pose a significant risk to humans or the environment. Exhibit 24. Condition of approval 20 requires the applicant provide a financial guarantee ensuring the fill project will be completed in its entirety, and the landfill materials are completely covered, within the five-year term of the shoreline permit.

d. He opined that underground storage tanks on the site will not pose a hazard. Underground tanks may actually be safer than aboveground tanks, based on state regulations. Underground tanks up to 10,000 gallons are exempt from SEPA review pursuant to WAC 197-11-800(2)(g). Above ground tanks of 500 gallons or more are subject to SEPA. The Cadet site east of the site was contaminated with solvents due to improper disposal, not leaking storage tanks.

e. He noted that the buildings on the site will be subject to the 45-foot height limit of the IL zoning. However the buildings must be setback a minimum 50 feet from abutting residential zoned properties, which will reduce the visual impact of the buildings.

f. He requested the examiner modify condition 5 to clarify that mitigation is required for removal of the Oregon White Oak trees on the site.

g. He requested the examiner move condition of approval 4 to the "General Conditions for Future Development" section.

h. He noted that the state Department of Ecology ("DOE") has final approval authority over the shoreline conditional use permit and the use of the clarifier solids in the fill.

i. He testified that the dioxin levels on the site are well below the cleanup threshold for industrial sites. However they are very close to the cleanup threshold for residential sites. Therefore the site must remain in IL zoning. It cannot be developed for residential uses.

j. He requested the examiner modify condition 7 to require City review and approval of the documentation substantiating that use of the levee for construction equipment will not increase the risk of flooding of property east of the levee.

3. Planner Brian Carrico and attorney Michael Simon testified on behalf of the applicant, Portside Lagoon and Landfill, LLC. Mr. Carrico accepted the findings and conditions in the Staff Report, as amended, without objections. He submitted a letter responding to the DOE's concerns about speculative fill. Exhibit 26. Mr. Simon testified that the dioxin levels on the site are approximately 12 to 13 parts per trillion, well below the maximum allowable levels of 875 parts per trillion for industrial sites. DOE staff has no concerns about the dioxin levels on this site.

4. Lee McCallister, president of the Fruit Valley Neighborhood Association, testified with questions and concerns about the project. He expressed concerns with the potential impacts of future industrial development on the site. Groundwater in the area is only 25 feet below the surface and easily subject to contamination. He questioned whether the buildings will be designed to withstand earthquakes, as the soils in area are mapped for moderate to high risk of liquefaction during an earthquake. The prevailing winds in the area blow from the northwest and will carry noise, dust and odors from the site into the Fruit Valley neighborhood. He objected to the proposed access driveway in the southeast corner of the site due to noise and traffic impacts in close proximity to the residential neighborhood. The neighbors would prefer a driveway further west on Lower River Road.

5. The examiner closed the record at the end of the hearing and announced his intention to approve the applications subject to the conditions in the Staff Report, as modified at the hearing.

### **C. DISCUSSION**

1. City staff recommended approval of this application, based on the affirmative findings and subject to conditions of approval in the Staff Report, as modified at the hearing. The applicant accepted those findings and conditions as modified, without exceptions or corrections.

2. The examiner concludes the affirmative findings in the Staff Report show the proposed fill does or can comply with the applicable standards of the City Code, provided the applicant complies with recommended conditions of approval as modified. The examiner adopts the affirmative findings in the Staff Report as his own, except to the extent they are inconsistent with the following findings. The attached conditions include changes to the conditions of approval as discussed at the hearing.

3. The examiner finds that this project does not constitute speculative fill, which is prohibited by Policy 81 and Regulation 245 of the VSMP. Policy 81 provides:

*Fills should be permitted only when necessary for a specific development proposal that is permitted by this Master Program. They should be of the minimum size necessary to provide for the proposed use. Speculative fill activity should be prohibited. Fills waterward of the OHWM should be prohibited except in conjunction with a water-dependent or public access use when such fill is necessary and unavoidable and complies with all other policies and regulations of this Master Program.*

Exhibit B

Page 6 of 13

Regulation 245 provides:

*Fills shall be permitted only in conjunction with a permitted use, and shall be of the minimum size necessary to support that use. Speculative fills are prohibited.*

a. The proposed fill is necessary to accommodate the specific light industrial development proposed in the site plan, Drawing Sheet C-1 of Exhibit 6. The proposed light industrial development is a permitted use in the IL zone. Although the applicant did not request approval of the site plan as part of this application, the site plan is incorporated into this shoreline application. The applicant must develop the site consistent with the proposed site plan or obtain City approval of a modification of the shoreline permit through the City's post-decision review process. The Code does not require simultaneous approval of the site plan and shoreline permits.

b. The examiner finds that the proposed fill is the minimum necessary to accommodate light industrial development on this site. As the applicant noted, "the nature of light industrial development makes it infeasible to elevate only the building pads." Exhibit 26. There is no substantial evidence to the contrary.

c. No fill is proposed waterward of the OHWM.

4. The examiner finds that the proposed fill will not exacerbate flooding in the area. The applicant's Critical Areas Report demonstrates that the fill proposed on this site will increase the 100-year flood event by 0.01 feet (0.08 inches). If all of the IL zoned property in the area were filled to the same level as the site it would increase the 100-year flood plain elevation by 0.35 inches.<sup>2</sup> See Appendix B of Exhibit 8. This is consistent with VMC 20.740.120(C)(1)(a), which requires that the applicant demonstrate "[t]hat the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point." As Mr. Wagner noted, the fill on this site may function as a levy, blocking floodwaters from reaching the adjacent Fruit Valley Neighborhood.

5. The examiner finds that this project will not impact the existing levy that protects the Fruit Valley Neighborhood. The applicant is prohibited from using the levy access road unless and until the applicant provides engineering analysis demonstrating that use of the levy roadway by heavy truck traffic and other equipment used to place fill on the site will not damage the levy. See condition of approval 7. Once the project is completed the fill on the site will support and strengthen the portion of the levy abutting the site.

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<sup>2</sup> The Staff Report states that "[f]illing all lands within the flood plain in this area would increase the elevation of the 100-year flood event by 0.03 feet (0.36 inch)." P 66 of the Staff Report. This is a typographical error. The applicant's Critical Areas Report clearly states that the net rise is 0.35 inches. See p 2 of Appendix B of Exhibit 8.

6. The examiner finds that the proposed fill will not have prohibited impacts on existing views from the adjacent Fruit Valley Neighborhood. VSMP Regulation 32 provides:

**32 REGULATION:**

*As part of any Master Plan or proposal for structures over thirty-five (35) feet in height, an analysis of views from residences in areas adjoining the shoreline including view corridors, view profiles, and vertical profiles from various locations shall be submitted. The views and/or view corridors to be protected are perpendicular and at angles to the water and include those views from the residential areas adjoining the shoreline and those from within the site to the water.*

The proposed buildings will have a maximum height of 45 feet, the maximum allowed by the IL zone. Because the site is so far away from the shoreline, there are no views to the shoreline that would be affected by the development of the site. In addition, the buildings will be separated from the adjacent neighborhood. The closest residences are located to the east of the site in the Fruit Valley neighborhood, on the other side of the city wastewater treatment lagoon and the existing flood levy. The top of the lagoons and levy are higher than the adjacent residence and create a visual barrier that prevents views of the site and other adjacent shoreline areas. At the closest point, the eastern edge of the subject property is approximately 100 feet from the western boundary of the abutting Fruit Valley residential neighborhood. However the building in this portion of the site will be setback roughly 200 feet from the east boundary of the site, based on Drawing C-1 of Exhibit 6. The remaining buildings on the site will be roughly 800 feet from the adjacent neighborhood, separated by the existing city wastewater treatment lagoon. Given the significant separation between the buildings on the site and the adjacent neighborhood and the existing visual barrier created by the levy and treatment ponds, the examiner finds that industrial development on this site will not have a significant impact on existing views.

7. The Fruit Valley Neighborhood Association expressed concerns that industrial uses on this site may impact the adjacent residential neighborhood, due to noise, dust, odors etc. They also objected to the proposed access location in the southeast corner of the site.

They argued that the applicant should be required to shift the access further west on Lower River Road in order to reduce noise and other traffic impacts on the adjacent neighborhood. The examiner understands those concerns, but they are not relevant to the applicable approval criteria for the proposed fill. They may be relevant to the approval criteria for the site plan approval. The examiner encourages the neighborhood to raise those concerns during the future site plan review process. In addition, many of these impacts are regulated by local and state laws. However this site is zoned for light industrial development, which allows a wide variety of uses and activities. Some impacts can be expected from such uses.

8. The Fruit Valley Neighborhood Association also expressed concerns about existing and future contamination on the site.

a. The Clark County Health Department determined that the applicant's proposal to mix the existing landfill material on the site, wastewater treatment clarifier solids, with the fill imported to the site poses no significant threat to human health or the environment. See Exhibit 24. There is no substantial evidence to the contrary. The landfill material contains some dioxins. However the dioxin levels on the site are well below the permitted levels for industrial sites, based on recent testing. The applicant is required to conduct additional testing to confirm that dioxin levels are below standards for industrial zoned properties prior to undertaking any ground-disturbing activity on the site. See Condition 19.

b. No underground tanks are proposed at this time. However nothing in the Code prohibits the use of underground storage tanks. The examiner has no authority to regulate or prohibit the use of underground storage tanks on this site. Any underground tanks must be reviewed by the proper state and local authorities prior to installation.

c. Future development on the site will be required to comply with the City's stormwater ordinance, including any additional requirements for treatment of runoff from industrial sites. See VMC 14.25. The examiner has no authority to require that the applicant detain stormwater on this site as a condition of this shoreline permit approval.

9. This site is mapped as an area of moderate to high liquefaction susceptibility. However the applicant's geotechnical report concludes that the magnitude of liquefaction settlement in this area of Vancouver will not preclude development of the property. The report also states that once the type of development is determined, additional investigation should be completed to characterize the liquefaction hazard and to design appropriate measures to address liquefaction settlement, if necessary. The applicant is required to submit additional geotechnical investigation prior to issuance of building permits on the site and, if necessary, include appropriate measures to address liquefaction settlement in the design of any buildings on the site. See condition of approval 24.

#### **D. CONCLUSION**

Based on the findings and discussion provided or incorporated herein, the examiner concludes that PRJ2008-01104 and SHL2008-00007 (Portside Lagoon and Landfill) should be approved, because it does or can comply with the applicable standards of the Vancouver Municipal Code and the Revised Code of the State of Washington, subject to conditions of approval necessary to ensure the resulting development will comply with the Code. The proposed Shoreline Conditional Use Permit must be reviewed and approved by the proper state and federal agencies, in this instance, the Washington State Department of Ecology.

### **E. ORDER**

The Hearings Examiner recommends APPROVAL of the proposed Shoreline Conditional Use permit to the Department of Ecology subject to the conditions noted below.

The Hearings Examiner APPROVES File No. PRJ2008-01104 and SHL2008-00007 (Portside Lagoon and Landfill) Shoreline Substantial Development Permit subject to the following conditions of approval:

### **CONDITIONS OF APPROVAL**

#### **Shoreline-related Permit Approval**

- 1. Decommissioning of the site's current infrastructure, including the landfill and lagoon, shall be the initial phase of the project in order for the entire 43-acre property to be utilized for the mixed material as part of the fill component.**

#### **Required Prior to Issuance of Grading Permit**

2. Receive Shoreline Approval from the Department of Ecology.
3. Obtain all other state, federal and local permits.
4. Provide a final mitigation plan for removal of the Oregon White Oak trees for approval by the planning official before any development, including grading and/or clearing begins.
5. The grading plan shall address the items suggested in section 3.2.3 page 8, Mitigation, of the JD White Critical Areas Report VAJDW-08-172 dated October 2008. The plan shall also address the items outlined in VMC 20.740.050.F Mitigation Plan Requirements.
6. Either revise the proposed construction entrance or provide documentation approved by the City substantiating that use of the levee for construction equipment will not increase the risk of flooding of property east of the levee. If such study indicates the potential for impacts could compromise the function of the levee, an alternative construction access will be required.
7. Provide a copy of a recorded covenant precluding all but emergency vehicles from having access to La Frambois Road.
8. Demonstrate the half- and full-width dimension of the proposed access road for the transport of fill material from SR 501/Northwest Lower River Road to the on-site road and where the construction entrance will be located. This road shall be constructed with a gravel surface to ensure dirt will not be tracked onto SR 501/Northwest Lower River Road.
9. Provide documentation showing access rights to the road from SR 501/Northwest Lower River Road to the on-site road east of this project.
10. Provide additional dedication of right of way to provide a total of 35 feet half-width right of way on La Frambois Road along the project's frontage.

11. Revise and re-submit the letter requesting the certificate of concurrency survey and traffic study based on the correct number of TAZ. This project is located within TAZ 39 and Vancouver TIF district area.
12. Revise and re-submit the safety analysis based on the new proposed access road located south of the project site.
13. Provide documentation documenting who is the responsible party(ies) for constructing the new alignment of 26th Avenue.
14. Provide the necessary right of way dedication for the new alignment of 26th Avenue.
15. Indicate mitigation for the addition of construction vehicles to the highway that may create an unsafe and uncomfortable environment for bicycle and pedestrian safety, which was stated on page 3-3 of the traffic study for staff review.
16. Pay the total Transportation Impact Fee due of \$6,616.40.
17. The applicant must provide the city and the Clark County Health District with test results from the on-site test wells confirming there are no groundwater impacts stemming from the landfill. Prior to commencing any ground-disturbing activity, the city and the CCHD must find the tests to be adequate and to confirm there are no impacts to the groundwater.
18. The applicant must provide professional testing results confirming that dioxin levels are below standards for industrial zoned properties. This must be reviewed and approved by the city and CCHD prior to commencing ground-disturbing activity.
19. Prior to commencing any ground-disturbing activity, the applicant must provide assurances that the fill project will be completed in its entirety within the five-year term of the shoreline permit. Such financial assurances must be acceptable to the city.
20. Prior to commencing any ground-disturbing activity, the applicant must provide the city engineering-based operation plan for review and approval. The plan shall include, as a minimum, the following:
  - a. Screening protocols, such as those currently instituted by the Port of Vancouver on the adjacent property, should be established to assure material coming in to the project adheres to grading permit standards.
  - b. The method and location where the material will be blended.
  - c. What the strata structure will be.
  - d. If a cap will be constructed, what it will look like.
  - e. The infrastructure (roads, utilities) that will be needed to complete the project.
  - f. A project time table from start to completion.
  - g. What the footprint will look like when completed.
  - h. Mixing ratios should be established taking into consideration minimal potential impact to human health or the environment. A minimum of 2-foot layers of the mixed material should be part of the plan.
21. Prior to commencing ground-disturbing activity, provide city staff with a copy of a recorded covenant indicating the site is to maintain its current zoning as light industrial.

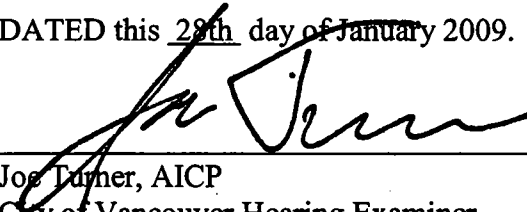
**During Construction**

22. Water mains shall be constructed within paved public rights of way or public easements.
23. A right of way permit is required for all work in the public right of way. When construction is to take place within a city of Vancouver or Clark County right of way, an approved traffic control plan is required prior to the start of construction.

**General Conditions for Future Development** - These are general comments and do not include all possible comments and conditions for the future development of this site.

24. Submit a complete geotechnical report meeting the requirements of VMC Title 17.
25. Site development is subject to shorelines and will continue to be subject to shoreline jurisdiction until such time as the site is fully developed.
26. BMPs will also be required for any future development of the site.
27. The applicant should remove pages C-8 through C-11 from the grading plan as the review for the utilities will be done with the industrial development of the parcels. For water quality and fire flow the proposed water main at the southwest corner must connect to the existing water main in Lower River Road.
28. The applicant shall provide payment of water System Development Charges, prior to the issuance of building permits.

DATED this 28th day of January 2009.



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Joe Turner, AICP  
City of Vancouver Hearing Examiner

**NOTE:** *Only the decision and the condition of approval are binding on the applicant as a result of this order. Other parts of the final order are explanatory, illustrative and/or descriptive. They may be requirements of local, state, or federal law, or requirements which reflect the intent of the applicant, the city staff, or the examiner, but they are not binding on the applicant as a result of the final order unless included as a condition.*



**APPEAL:** Decisions of the Hearings Examiner may be appealed to City Council. Any party with standing under Section 20.210.130(B) VMC may submit a written appeal to the planning official containing the items listed below.

1. The case number designated by the city and the name of the applicant;
2. The name and signature of each petitioner or their authorized representative and a statement showing that each petitioner has standing to file the appeal under this chapter. If multiple parties file a single petition for review, the petition shall designate one party as the contact representative for all contact with the planning official. All contact with the planning official regarding the appeal, including notice, shall be with the contact representative;
3. The specific aspect(s) of the decision or determination being appealed, and the specific reasons why each aspect is in error as a matter of fact or law;
4. A statement demonstrating that the specific issues raised on appeal were raised during the period in which the record was open.
5. The appeal must be received no later than 14 calendar days after written notice of the decision is mailed.
6. The appeal fee is \$1,145.10 as per Chapter 20.180 VMC, Fees. The fee shall be refunded if the appellant requests withdrawal of the appeal in writing at least 14 calendar days before the scheduled appeal hearing date.



# Building Permit Application

## SITE DEVELOPMENT, GRADING (SDP)

**CITY OF VANCOUVER**  
 Submit to: 415 W 6<sup>th</sup> ST ~ Vancouver, WA 98660  
 PO Box 1995 ~ Vancouver, WA 98668  
 Phone (360) 487-7800 Fax (360) 487-7808  
 www.cityofvancouver.us

TYPE OF WORK		
<input checked="" type="checkbox"/> Grading only	<input type="checkbox"/> Project related site work/grading	
<input type="checkbox"/> Site Review & Inspection	<input type="checkbox"/> Inspection only	
OCCUPANCY TYPE		
<input type="checkbox"/> Single Family	<input checked="" type="checkbox"/> Commercial	
SCOPE OF ON-SITE WORK		
<input type="checkbox"/> ADA improvements	<input type="checkbox"/> Curbing	<input type="checkbox"/> Fencing
<input type="checkbox"/> Fire lane/signage	<input type="checkbox"/> Irrigation	<input type="checkbox"/> Internal side circulation/ driveway
<input type="checkbox"/> Landscaping	<input type="checkbox"/> Lighting	<input type="checkbox"/> Loading areas
<input type="checkbox"/> Parking Stall	<input type="checkbox"/> Private on-site sewer	<input type="checkbox"/> On-site electrical
<input type="checkbox"/> Signage	<input type="checkbox"/> Solid waste collection	<input type="checkbox"/> Stormwater facility
<input type="checkbox"/> Tree protection	<input type="checkbox"/> Private on-site water	<input type="checkbox"/> Fire vault
<input type="checkbox"/> Temporary electrical service	<input type="checkbox"/> Private street improvements	<input checked="" type="checkbox"/> Grading only
JOB SITE INFORMATION AND LOCATION		
➔ Job site address: 2600 Lower River Road, Vancouver, WA		
Project Name (if applicable): Portside Lagoon & Landfill		
Suite/bldg./apt #:		
Project name: same as above		
Tax Assessor Serial Number: 151957-002, 151959-000, 151963-000		
Nearest intersection if no site address: 152372-004, 151969-000		
DESCRIPTION OF WORK		
Please see attached		
<input type="checkbox"/> APPLICANT <input checked="" type="checkbox"/> CONTACT PERSON		
Business name:		
Contact name: Slade Leahy		
Address: PO Box 489		
City/State/Zip: Cornelius, Oregon 97113		
Phone: ( 503.357.2193      Fax: ( 503.357.3649		
E-mail (required): sladel@kenleahy.com		
<input checked="" type="checkbox"/> PROPERTY OWNER <input type="checkbox"/> TENANT		
Name: LaFrombois Properties, LLC		
Address: 1111 Main Street, Suite 700		
City/State/Zip: Vancouver, Washington 98660		
Phone: ( ) 360.694.6000      Fax: ( ) N/A		
CONTRACTOR		
Business name: Ken Leahy Construction, Inc.		
Contact name: Slade Leahy		
Address: PO Box 489		
City/State/Zip: Cornelius, Oregon 97113		
Phone: ( 503.357.2193      Fax: ( 503.357.3649		
WA State Contractor License #: CC KENLECI185N3		

REQUIRED DATA: ALL PROPOSED WORK (EXCEPT GRADING)			
Permit fees* are based on the value of the work performed. Indicate the value (rounded to the nearest dollar) of all equipment, materials, labor, overhead, and the profit for the work indicated on this application.			
\$ _____			
GRADING ONLY			
(please check applicable boxes and enter quantities where required)			
<input type="checkbox"/> <b>MINOR grading</b> Minor grading permit would include: <ul style="list-style-type: none"> <li>• Grading cuts, fills and/or stockpiling with volumes less than 500 cubic yards</li> <li>• Projects that do not require a SEPA</li> <li>• Projects that are not subject to the Critical Areas Ordinance (Critical Areas include, but are not limited to, steep and unstable slopes, wetlands, creeks and seismic zones)</li> </ul>		<input checked="" type="checkbox"/> <b>MAJOR grading</b> Major grading permit would include: <ul style="list-style-type: none"> <li>• Grading cuts, fills and/or stockpiling with volumes greater than 500 cubic yards.</li> <li>• SEPA required (all grading activities greater than 500 cubic yards in volume require a SEPA)</li> <li>• Critical Areas Permit required (grading activity that is within or adjacent to steep or unstable slopes, wetlands, creeks or other Critical Areas, regardless of the grading volumes involved)</li> </ul>	
Excavation/Grading is:		<input checked="" type="checkbox"/> Stand-alone	<input type="checkbox"/> Related to a project
Will any trees be removed?		<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are any trees located in the grading area?		<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Indicate the type of excavation and/or grading activity: (check all that apply)		<input checked="" type="checkbox"/> Cut	Total amount of cut: 209,933 cy
		<input checked="" type="checkbox"/> Fill	Total amount of fill: 319,317 cy
Will cut be exported?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If yes, where?			
Amount of land disturbance:		acres +/- 43	
Grading permit is for: (check applicable box)			
<input type="checkbox"/> Parking Lot	<input type="checkbox"/> Driveway	<input type="checkbox"/> Retaining Wall	<input type="checkbox"/> Stockpiling
If stockpiling, length of time material will be stockpiled:			
<input checked="" type="checkbox"/> Other (please explain):		Landfill	
NOTICE			
<i>I/we understand that per VMC 20.210.090 (Review for Counter Complete Status), if it is determined that the application is not complete, the City shall immediately reject and return the application and identify in writing what is needed to make the application counter complete.</i> <i>I/we agree that City of Vancouver staff may enter upon the subject property at any reasonable time to consider the merits of the application, to take photographs and to post public notices.</i>			
Applicant signature:			
Print Name: Slade Leahy			Date: 06/11/13
Property Owner Signature:			
Print Name: Paul Christensen			Date: 06/11/13

.....application continues on following page

## GRADING GENERAL INFORMATION AND SUBMITTAL REQUIREMENTS

**Grading permits are required** for nearly all projects that include the disturbing or moving of more than 10 cubic yards of earth or vegetation.

Other examples of projects that require a grading permit are:

- Stand-alone grading (cut and fill) not associated with any structure.
- Grading work requested prior to obtaining building permit approval.
- Grading associated with non-building or structure such as parking lots, retaining walls, resurfacing of sport tracks, etc.
- Stockpiling

**Types of projects that do not require grading permit:**

- Excavation for pads/footings of commercial, multi-family and single-family projects that do not exceed the approved footprint area and/or does not involve structural fill
- Decorative ponds (less than 10 c.y. and a depth of less than 12"

A Construction Stormwater General Permit (NPDES) and a Stormwater Pollution Prevention Plan (SWPPP) is required for all solid disturbing activities (including grading, stump removal, demolition) where one or more acres will be disturbed, and stormwater will be discharged to a receiving water directly (e.g. wetlands, creeks, unnamed creeks, river, marine waters, ditches, estuaries) or to storm drains that discharge to a receiving water.

### MINOR GRADING SUBMITTAL REQUIREMENTS

<input type="checkbox"/> Fees associated with the application
<input type="checkbox"/> Completed and signed application
<input type="checkbox"/> <b>Five (5)</b> complete sets of legible grading plans and details including: <ul style="list-style-type: none"> <li>• Folded and collated plans (no smaller than 11"x17" and drawn to scale of 1"=20' to 1"=50')</li> <li>• City of Vancouver grading approval block or stamp</li> <li>• Property owner information</li> <li>• Drawn by information</li> <li>• Fully indicate the extent of the work proposed</li> <li>• Cut and fill proposed – in cubic yards</li> <li>• Erosion control plan (including standard erosion statement or standard erosion detail)</li> <li>• Existing conditions plan</li> <li>• Existing and proposed contours of subject property and adjacent sites (2' intervals)</li> <li>• Show in detail that the work will conform to all applicable standards and regulations per IBC</li> </ul>
<input type="checkbox"/> Vicinity map that clearly shows the site and adjacent properties and streets
<input type="checkbox"/> Tax parcel number
<input type="checkbox"/> Site Plan (5 copies)
<input type="checkbox"/> Tree Plan (5 copies)
<input type="checkbox"/> A copy of the NPDES and SWPPP shall be submitted prior to plan approval (if required)
<input type="checkbox"/> Additional information and/or plans may be required upon review

### MAJOR GRADING SUBMITTAL REQUIREMENTS

<input type="checkbox"/> Fees associated with the application
<input checked="" type="checkbox"/> Completed and signed application
<input checked="" type="checkbox"/> <b>Five (5)</b> complete sets of legible grading plans and details including: <ul style="list-style-type: none"> <li>• Folded and collated plans (no smaller than 24"x36" and drawn to scale of 1"=20' to 1"=50')</li> <li>• City of Vancouver grading approval block or stamp</li> <li>• Fully indicate the extent of the work proposed</li> <li>• Cut and fill proposed (in cubic yards)</li> <li>• Erosion control plan (including standard erosion statement or standard erosion detail)</li> <li>• Existing conditions plan</li> <li>• Existing and proposed contours of subject property and adjacent sites (cut and fill, cross sections and lifts or layering if applicable)</li> <li>• Existing and proposed drainage</li> <li>• Sensitive area delineation</li> <li>• Setbacks from top and toe of slopes (if applicable)</li> <li>• Shown in detail that the work will conform to all applicable standards and regulations per IBC</li> <li>• Stamped by Washington registered engineer (if proposed work is stockpiling ONLY, and the stockpiled dirt will not be used for surcharge or structural fill, then a Washington registered engineer stamp may not be required.</li> </ul>
<input checked="" type="checkbox"/> <b>Four (4)</b> copies of a Soils (geotechnical) report <ul style="list-style-type: none"> <li>• Liquefaction study (if applicable)</li> </ul>
<input checked="" type="checkbox"/> Vicinity map that clearly shows the site and adjacent properties and streets
<input checked="" type="checkbox"/> Tax parcel number
<input checked="" type="checkbox"/> Site Plan (5 copies) Included in grading plan submittal
<input checked="" type="checkbox"/> Tree Plan (5 copies) Included in grading plan submittal
<input type="checkbox"/> SEPA (if required)
<input type="checkbox"/> A copy of the NPDES and SWPPP shall be submitted prior to plan approval (if required) –
<input type="checkbox"/> Additional information and/or plans may be required upon review

### SITE REVIEW AND INSPECTION SUBMITTAL REQUIREMENTS

<input type="checkbox"/> Any fees associated with the application
<input type="checkbox"/> Completed and signed application
<input type="checkbox"/> <b>Five (5)</b> copies of Site Plan and Vicinity Map drawn to scale, showing the geographic location labeled with: <ul style="list-style-type: none"> <li>• Map &amp; tax lot #</li> <li>• Project name</li> <li>• Site address and Suite # (if applicable)</li> <li>• Zoning</li> <li>• Applicant name and phone number</li> </ul>
<input type="checkbox"/> Grading Plan (see applicable grading requirements)
<input type="checkbox"/> Tree Plan (5 copies)
<input type="checkbox"/> Soils (geotechnical report) and liquefaction study (if applicable) – 4 copies
<input type="checkbox"/> SEPA (if required)
<input type="checkbox"/> A copy of the NPDES and SWPPP shall be submitted prior to plan review (if required)

**CITY OF VANCOUVER - GRADING PERMIT APPLICATION:  
PORTSIDE LAGOON & LANDFILL**

**June 2013**

*Applicant:*

P&K Development, LLC.  
PO Box 489  
Cornelius, Oregon 97113  
503.357.2193

*Contact:*

Ken Leahy Construction, Inc.  
PO Box 489  
Cornelius, Oregon 97113  
Attention: Slade Leahy  
Email: [sladel@kenleahy.com](mailto:sladel@kenleahy.com)  
Office: 503.357.2193  
Fax: 503.357.3649



# Building Permit Application

## SITE DEVELOPMENT, GRADING (SDP)

**CITY OF VANCOUVER**  
 Submit to: 415 W 6<sup>th</sup> ST ~ Vancouver, WA 98660  
 PO Box 1995 ~ Vancouver, WA 98668  
 Phone (360) 487-7800 Fax (360) 487-7808  
 www.cityofvancouver.us

TYPE OF WORK	
<input checked="" type="checkbox"/> Grading only	<input type="checkbox"/> Project related site work/grading
<input type="checkbox"/> Site Review & Inspection	<input type="checkbox"/> Inspection only
OCCUPANCY TYPE	
<input type="checkbox"/> Single Family	<input checked="" type="checkbox"/> Commercial
SCOPE OF ON-SITE WORK	
<input type="checkbox"/> ADA improvements	<input type="checkbox"/> Curbing
<input type="checkbox"/> Fire lane/signage	<input type="checkbox"/> Irrigation
<input type="checkbox"/> Landscaping	<input type="checkbox"/> Lighting
<input type="checkbox"/> Parking Stall	<input type="checkbox"/> Private on-site sewer
<input type="checkbox"/> Signage	<input type="checkbox"/> Solid waste collection
<input type="checkbox"/> Tree protection	<input type="checkbox"/> Private on-site water
<input type="checkbox"/> Temporary electrical service	<input type="checkbox"/> Private street improvements
<input type="checkbox"/> Fencing	<input type="checkbox"/> Internal side circulation/ driveway
<input type="checkbox"/> Loading areas	<input type="checkbox"/> On-site electrical
<input type="checkbox"/> Stormwater facility	<input type="checkbox"/> Fire vault
<input checked="" type="checkbox"/> Grading only	
JOB SITE INFORMATION AND LOCATION	
➔ Job site address: 2600 Lower River Road, Vancouver, WA	
Project Name (if applicable): Portside Lagoon & Landfill	
Suite/bldg./apt #:	
Project name: same as above	
Tax Assessor Serial Number: 151957-002, 151959-000, 151963-000	
Nearest intersection if no site address: 152372-004, 151969-000	
DESCRIPTION OF WORK	
Please see attached	
<input type="checkbox"/> APPLICANT	<input checked="" type="checkbox"/> CONTACT PERSON
Business name: P & K Development, LLC.	
Contact name: Slade Leahy	
Address: PO Box 489	
City/State/Zip: Cornelius, Oregon 97113	
Phone: ( ) 503.357.2193	Fax: ( ) 503.357.3649
E-mail (required): sladel@kenleahy.com	
<input checked="" type="checkbox"/> PROPERTY OWNER	<input type="checkbox"/> TENANT
Name: Portside Lagoon & Landfill LLC	
Address: 1111 Main Street, Suite 700	
City/State/Zip: Vancouver, Washington 98660	
Phone: ( ) 360.694.6000	Fax: ( ) N/A
CONTRACTOR	
Business name: Ken Leahy Construction, Inc.	
Contact name: Slade Leahy	
Address: PO Box 489	
City/State/Zip: Cornelius, Oregon 97113	
Phone: ( ) 503.357.2193	Fax: ( ) 503.357.3649
WA State Contractor License #: CC KENLEC1185N3	

REQUIRED DATA: ALL PROPOSED WORK (EXCEPT GRADING)			
Permit fees* are based on the value of the work performed. Indicate the value (rounded to the nearest dollar) of all equipment, materials, labor, overhead, and the profit for the work indicated on this application.			
\$ _____			
GRADING ONLY			
(please check applicable boxes and enter quantities where required)			
<input type="checkbox"/> <b>MINOR grading</b> Minor grading permit would include: <ul style="list-style-type: none"> <li>Grading cuts, fills and/or stockpiling with volumes less than 500 cubic yards</li> <li>Projects that do not require a SEPA</li> <li>Projects that are not subject to the Critical Areas Ordinance (Critical Areas include, but are not limited to, steep and unstable slopes, wetlands, creeks and seismic zones)</li> </ul>		<input checked="" type="checkbox"/> <b>MAJOR grading</b> Major grading permit would include: <ul style="list-style-type: none"> <li>Grading cuts, fills and/or stockpiling with volumes greater than 500 cubic yards.</li> <li>SEPA required (all grading activities greater than 500 cubic yards in volume require a SEPA)</li> <li>Critical Areas Permit required (grading activity that is within or adjacent to steep or unstable slopes, wetlands, creeks or other Critical Areas, regardless of the grading volumes involved)</li> </ul>	
Excavation/Grading is:	<input checked="" type="checkbox"/> Stand-alone	<input type="checkbox"/> Related to a project	
Will any trees be removed?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Are any trees located in the grading area?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Indicate the type of excavation and/or grading activity: (check all that apply)	<input checked="" type="checkbox"/> Cut	Total amount of cut:	209,933 cy
	<input checked="" type="checkbox"/> Fill	Total amount of fill:	319,317 cy
Will cut be exported?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
If yes, where?			
Amount of land disturbance:	acres +/- 43		
Grading permit is for: (check applicable box)			
<input type="checkbox"/> Parking Lot	<input type="checkbox"/> Driveway	<input type="checkbox"/> Retaining Wall	<input type="checkbox"/> Stockpiling
If stockpiling, length of time material will be stockpiled:			
<input checked="" type="checkbox"/> Other (please explain):		Landfill	
NOTICE			
I/we understand that per VMC 20.210.090 (Review for Counter Complete Status), if it is determined that the application is not complete, the City shall immediately reject and return the application and identify in writing what is needed to make the application counter complete.			
I/we agree that City of Vancouver staff may enter upon the subject property at any reasonable time to consider the merits of the application, to take photographs and to post public notices.			
Applicant signature:			
Print Name: Slade Leahy			Date: 06/11/13
Property Owner Signature:			
Print Name: Ken Leahy			Date: 06/11/13

.....application continues on following page

**GRADING GENERAL INFORMATION AND SUBMITTAL REQUIREMENTS**

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- Stand-alone grading (cut and fill) not associated with any structure.
- Grading work requested prior to obtaining building permit approval.
- Grading associated with non-building or structure such as parking lots, retaining walls, resurfacing of sport tracks, etc.
- Stockpiling

**Types of projects that do not require grading permit:**

- Excavation for pads/footings of commercial, multi-family and single-family projects that do not exceed the approved footprint area and/or does not involve structural fill
- Decorative ponds (less than 10 c.y. and a depth of less than 12"

A Construction Stormwater General Permit (NPDES) and a Stormwater Pollution Prevention Plan (SWPPP) is required for all solid disturbing activities (including grading, stump removal, demolition) where one or more acres will be disturbed, and stormwater will be discharged to a receiving water directly (e.g. wetlands, creeks, unnamed creeks, river, marine waters, ditches, estuaries) or to storm drains that discharge to a receiving water.

**MINOR GRADING SUBMITTAL REQUIREMENTS**

<input type="checkbox"/> Fees associated with the application
<input type="checkbox"/> Completed and signed application
<input type="checkbox"/> <b>Five (5)</b> complete sets of legible grading plans and details including: <ul style="list-style-type: none"> <li>• Folded and collated plans (no smaller than 11"x17" and drawn to scale of 1"=20' to 1" = 50'</li> <li>• City of Vancouver grading approval block or stamp</li> <li>• Property owner information</li> <li>• Drawn by information</li> <li>• Fully indicate the extent of the work proposed</li> <li>• Cut and fill proposed – in cubic yards</li> <li>• Erosion control plan (including standard erosion statement or standard erosion detail)</li> <li>• Existing conditions plan</li> <li>• Existing and proposed contours of subject property and adjacent sites (2' intervals)</li> <li>• Show in detail that the work will conform to all applicable standards and regulations per IBC</li> </ul>
<input type="checkbox"/> Vicinity map that clearly shows the site and adjacent properties and streets
<input type="checkbox"/> Tax parcel number
<input type="checkbox"/> Site Plan (5 copies)
<input type="checkbox"/> Tree Plan (5 copies)
<input type="checkbox"/> A copy of the NPDES and SWPPP shall be submitted prior to plan approval (if required)
<input type="checkbox"/> Additional information and/or plans may be required upon review

**MAJOR GRADING SUBMITTAL REQUIREMENTS**

<input type="checkbox"/> Fees associated with the application
<input checked="" type="checkbox"/> Completed and signed application
<input checked="" type="checkbox"/> <b>Five (5)</b> complete sets of legible grading plans and details including: <ul style="list-style-type: none"> <li>• Folded and collated plans (no smaller than 24"x36" and drawn to scale of 1"=20' to 1"=50'</li> <li>• City of Vancouver grading approval block or stamp</li> <li>• Fully indicate the extent of the work proposed</li> <li>• Cut and fill proposed (in cubic yards)</li> <li>• Erosion control plan (including standard erosion statement or standard erosion detail)</li> <li>• Existing conditions plan</li> <li>• Existing and proposed contours of subject property and adjacent sites (cut and fill, cross sections and lifts or layering if applicable)</li> <li>• Existing and proposed drainage</li> <li>• Sensitive area delineation</li> <li>• Setbacks from top and toe of slopes (if applicable)</li> <li>• Shown in detail that the work will conform to all applicable standards and regulations per IBC</li> <li>• Stamped by Washington registered engineer (if proposed work is stockpiling ONLY, and the stockpiled dirt will not be used for surcharge or structural fill, then a Washington registered engineer stamp may not be required.</li> </ul>
<input checked="" type="checkbox"/> <b>Four (4)</b> copies of a Soils (geotechnical) report <ul style="list-style-type: none"> <li>• Liquefaction study (if applicable)</li> </ul>
<input checked="" type="checkbox"/> Vicinity map that clearly shows the site and adjacent properties and streets
<input checked="" type="checkbox"/> Tax parcel number
<input checked="" type="checkbox"/> Site Plan (5 copies) Included in grading plan submittal
<input checked="" type="checkbox"/> Tree Plan (5 copies) Included in grading plan submittal
<input type="checkbox"/> SEPA (if required)
<input type="checkbox"/> A copy of the NPDES and SWPPP shall be submitted prior to plan approval (if required) –
<input type="checkbox"/> Additional information and/or plans may be required upon review

**SITE REVIEW AND INSPECTION SUBMITTAL REQUIREMENTS**

<input type="checkbox"/> Any fees associated with the application
<input type="checkbox"/> Completed and signed application
<input type="checkbox"/> <b>Five (5)</b> copies of Site Plan and Vicinity Map drawn to scale, showing the geographic location labeled with: <ul style="list-style-type: none"> <li>• Map &amp; tax lot #</li> <li>• Project name</li> <li>• Site address and Suite # (if applicable)</li> <li>• Zoning</li> <li>• Applicant name and phone number</li> </ul>
<input type="checkbox"/> Grading Plan (see applicable grading requirements)
<input type="checkbox"/> Tree Plan (5 copies)
<input type="checkbox"/> Soils (geotechnical report) and liquefaction study (if applicable) – 4 copies
<input type="checkbox"/> SEPA (if required)
<input type="checkbox"/> A copy of the NPDES and SWPPP shall be submitted prior to plan review (if required)



## **Exhibit A – Description of Work**

### **1) Phase 1 – Clarifier Solids (Summer 2013)**

- a. Spray existing 18 acres with round-up
- b. Clear & Grub existing trees and “heavy” organics, and stockpile elsewhere on site.
- c. Till the 18 acres to thoroughly mix existing material with the dead organics.
- d. Demolish and remove existing liners and piping from current placement and prepare for future resale/reuse by another party.
- e. Excavate +/- 2.5’ below grade and “windrow or side cast” material to either side.
- f. Layout clarifier solids, till and compact with native on-site material at ratio recommended by GRI in lifts until all clarifier solids are gone from current “lagoon” area.

### **2) Phase 2 – Landfill Operation (Summer 2013 thru +/- 2015)**

- a. Manage, Accept, Place & Compact structural material from different sources until desired elevation is achieved for future development.





**Construction, Inc.**  
P.O. Box 439 • 915 S. 17<sup>th</sup> Ave. • Cornelius, Oregon  
(503) 357-2193 • FAX (503) 357-3649

**13-06-10 Portside Lagoon Projected Grading Costs**

**Clarifier Solids Remediation**

Solids Placement & Rehandle	\$ 1,439,155.50
Misc Demo	\$ 100,000.00
Boise Cascade Contribution	\$ (950,000.00)
<b>Subtotal</b>	<b>\$ 589,155.50</b>

**Additional Fill Costs 2014-15-16**

Landfill Operation	\$ 1,027,109.00
Tipping Fees (\$2/CY)	\$ (500,000.00)
<b>Subtotal</b>	<b>\$ 527,109.00</b>

**Total Projected Grading Costs \$ 1,116,264.50**



1101 Broadway, Suite 130  
Vancouver, WA 98660  
p| 360-213-1690 f| 360-213-1697

## MEMORANDUM

**To:** Ken Leahy / Ken Leahy Construction, Inc.

**Date:** May 22, 2013

**GRI Project No.:** W1104

**From:** Dave Driscoll, PE; and Matt Shanahan, PE

**Re:** Fill Material Evaluation  
43-Acre Site  
2600 NW Lower River Road  
Vancouver, Washington

At your request, GRI has undertaken a limited geotechnical investigation to evaluate the probable performance of a structural fill that you propose to construct on the above-referenced 43-acre parcel in Vancouver, Washington. Following placement of the structural fill, an industrial development will be constructed on the site.

The primary purpose of our work was to evaluate the probable performance of compacted structural fill materials that incorporate the clarifier solids blended at various concentrations with on-site clayey and sandy silt and imported fine-grained sand and silty sand. Samples of the proposed fill soil were delivered to our Beaverton office by Leahy Construction. Our work included a limited subsurface investigation in the sediment-filled clarifier lagoon, laboratory testing, and limited engineering analyses. This memorandum summarizes our findings and provides our conclusions and recommendations for site filling and estimated performance of the fill.

### PROJECT DESCRIPTION

Portions of the site are occupied by two abandoned clarifier sedimentation lagoons previously operated by the Boise Cascade Corporation; one of the lagoons is partially filled with water, and the other lagoon is partially filled with clarifier solids. The remainder of the site is an 18-acre agricultural property that was recently farmed to a depth of about 12 in. and is characterized by ridges and furrows. We understand you propose to raise site grades across the lagoons 8 to 10 ft above the elevation of the agricultural property. This will place the finished grade at about elevation 29 ft (NGVD 1929), which is about 2 ft above the 100-year design flood elevation of 26.6 ft. We further understand you wish to incorporate the clarifier solids into the fill, provided the resulting fill will adequately support the proposed commercial development.

The fill will include relatively clean imported excavation spoil of fine-grained sand or silty fine-grained sand. You propose to blend the clarifier solids from the west lagoon with the imported sand fill and/or the on-site brown, clayey silt in the upper 2.5 ft of the 18-acre agricultural property that makes up the northwest portion of the site. We also understand you will remove the impervious liner from the lagoons and lower the elevation of the perimeter dikes to elevation 29 ft. The lagoon will subsequently be filled

with structural fill, and site grades will be raised to a design finished grade elevation of about 29 ft on the perimeter of the fill. We understand the potential future use of this property will be a light industrial development. We have assumed maximum column and wall loads will be about 150 kips and 4 kips/ft, respectively. The floor live load is assumed to be 200 psf or less.

### **SUBSURFACE CONDITIONS**

The subsurface investigation conducted by GRI was limited to the west lagoon and was intended to disclose the thickness, consistency, and natural moisture content of the clarifier solids. Three test pits were excavated with a small hydraulic excavator supplied by Ken Leahy Construction. The approximate locations of the test pits are shown on Figure 1. Logs of the test pits are provided on Figure 2. The test pits were excavated to refusal on gravel at the bottom of the lagoon and disclosed clarifier solids of varying color and consistency. Disturbed half-pint jar samples and large bucket samples of the clarifier solids were obtained from the test pits and returned to our laboratory for testing. The clarifier solids are reported to consist of kaolinite clay, calcium carbonate, and cellulose fibers. Testing completed by GRI indicates the clarifier solids exhibit a high natural moisture content that ranges from about 125 to 235% and averages about 184%. The moisture content is based on the dry weight of the solids; consequently, if the moisture content of a soil is greater than 100%, the weight of water in the sample exceeds the weight of the dry solids. This material was very soft to soft and felt compressible and sponge-like when squeezed in the hand; however, free water was not expelled. The site is covered in native grasses, brush, and small deciduous trees. Numerous earthworms were observed in the upper 2 to 3 ft of the test pits. Seepage was observed in test pits TP-2 and TP-3 at a depth of 7 and 2 ft, respectively

### **SAMPLE PREPARATION AND TESTING**

Our laboratory testing was intended to simulate the processes that we anticipate will be used in the field. To that end, the clarifier solids collected during our investigation were thoroughly mixed in a 5-gal. bucket and maintained at their natural moisture content for incorporation, in varying percentages, with the fill material. The moisture content of the imported sand and the on-site brown silt was adjusted by air drying to achieve a reasonable range of moistures for the moisture-density testing in accordance with ASTM D 698. The unused soil from the moisture-density testing was used to form the samples for the one-dimensional consolidation testing (ASTM D 2435). The consolidation test samples were formed using kneading compaction techniques with a Harvard miniature spring-loaded hammer with a spring constant of 15 lbs force and a hammer face area of about 0.5 sq in. Proportioning of materials for forming samples for testing was based on loose volumes rather than dry weight and moisture content as would customarily be done, since proportioning in the field will be crudely based on volumetric measure.

The results of various compaction tests are summarized on Figure 3. Points labeled A, B, and C represent single-point compaction tests at various ratios of fill sand to clarifier solids; both materials were at their natural moisture content. The tests were conducted to permit a preliminary evaluation of the performance of different ratios of fill sand and clarifier solids. The selected ratios were three parts imported fill sand to one, two, and three parts clarifier solids (A, B, and C, respectively). These single-point tests were performed in accordance with ASTM D 698 (Standard Proctor Compaction). Review of this data disclosed that for increasing percentages of clarifier solids, there is a decrease in compacted dry density and increase in moisture content. However, the decrease in dry density from point B to C results in a significantly larger change than from A to B. This suggests there is not a linear relationship associated with the percentage of clarifier solids and resulting density.

The important visual observation during these tests was that at the natural moisture contents with a 3:1 sand-to-clarifier solids ratio (Point A), there was no shoving or pumping of the sample in the mold, and constant thumb pressure resulted in no indentation of the sample. Point B sample with a 3:2 sand-to-clarifier solids ratio displayed minor shoving and pumping under the impact of the compaction hammer, that static thumb pressure of the thumb resulting in a minor indentation, but the sample appeared stable. Point C sample with a 3:3 sand-to-clarifier ratio displayed significant shoving and pumping under the impact of the compaction hammer, and static pressure with the thumb resulted in penetration into the sample with relative ease.

Also shown on Figure 3 are four compaction curves labeled D, E, F, and G. Following the three individual compaction test points described above, complete moisture-density tests (ASTM D 698) were completed on samples of imported sand fill (curve D), on-site brown silt (curve E), 3:2 sand-to-clarifier solids (curve F), and 3:2 on-site brown silt-to-clarifier solids (curve G). Review of these four curves indicates the proposed fill materials, curves D and E, have a maximum dry density of about 100 pcf, with the optimum moisture content of the sand at about 18.5 %, and the on-site silt about 21.5%. Curves F and G indicate that for 3:2 ratios of sand or brown, on-site silt-to-clarifier solids, the optimum moisture contents are about 29.5 and 33%, and maximum dry density is of 88.3 and 79.3 pcf, respectively. These data indicate the optimum moisture content increased about 11% for both soil mixtures. The maximum dry density of the sand mixture decreased about 11 pcf; however, the maximum dry density of the on-site silt and clarifier soil mixture decreased about 20.5 pcf, or almost twice as much as the sand mixture.

Following the laboratory compaction testing, one-dimensional consolidation testing (ASTM 2435) was performed on selected ratios of fill soil and clarifier solids remaining from the compaction testing. The consolidation samples were prepared by compacting the soil-clarifier solids mixture directly into the ring of the consolidometer using the spring-loaded Harvard miniature hammer. Attempts were made to construct consolidation test samples that were at least 95% of the maximum dry density at about or below the optimum moisture content. Points H, I, J, and K on Figure 3 summarize the initial dry density and the initial moisture content of the consolidation test samples. Recall that points A, B, and C were compacted at an effort that was equivalent to ASTM D 698, as were each of the points on the complete curves F and G. Examination of these data suggests that except for sample K, all of the samples tested appear to be less than 95% of the maximum dry density determined by ASTM D 698. The moisture content of sample I was below optimum and sample K was above optimum; the relationship of samples H and J to the optimum moisture content and maximum dry density could not be determined because complete curves were not prepared.

The results of the consolidation testing are summarized on Figure 4. Examination of these data show that the compressibility of the various sand and clarifier solids mixtures increases with increasing percentages of clarifier solids, with a large increase in going from 2 to 3 parts clarifier solids; a similar relationship occurred when comparing dry density, i.e., points A, B, and C on Figure 3. Of additional interest is the fact that the mixture of three parts sand to three parts clarifier solids (the red curve) is almost identical to the dark blue curve, which corresponds to three parts on-site brown silt to two parts clarifier solids, see Figure 4. This suggests the two samples may have an equivalent amount of organic matter.

## **ENGINEERING ANALYSIS**

Based on our understanding of the proposed development, limited settlement analyses were completed for shallow footings founded at a depth of 2 ft below finished grade. We assumed the soil-clarifier solids modified fills were confined to the lower 2 ft of the 10-ft-thick fill, and the remaining 8 ft of structural fill will be relatively clean sand or organic-free silt approved by the geotechnical engineer of record. We also assumed the total density of the compacted fill sand and the sand-clarifier solids mix was about 120 and 115 pcf, respectively, and an allowable soil-bearing capacity of 2,500 psf. The water level was assumed to be below the base of the fill. Settlements were calculated for the maximum column and wall loads of 150 kips and 4 kips/ft, respectively. Based on these assumptions, we estimate the settlement of column and wall footings will be less than 1 in. We recommend verifying these estimates as part of the preconstruction geotechnical investigation, which must be completed once the site grading is finished.

## **CONCLUSIONS AND RECOMMENDATIONS**

### **Approach to Construction**

Based on the results of our laboratory testing and limited engineering analyses, we are of the opinion that a suitable structural fill can be constructed from mixtures of two parts fill sand or on-site brown, clayey silt to about one part clarifier solids, i.e., about 30% by volume. We understand you would like to develop an approach to construction that allows in "single handling" the fill soil and the clarifier solids. The most efficient approach to construction would be to spread imported silty sand or the native brown, clayey and sandy silt fill to a thickness of 8 to 12 in. (loose) and moisture-condition the soil to the range of 3% below the optimum moisture content as determined by ASTM D 698. The moisture-conditioning should be accomplished by tilling to a maximum depth of about 12 in. Subsequently, a predetermined thickness (4 to 6 in.) of the clarifier solids should be spread over the tilled, moisture-conditioned fill. The two layers of material should then be thoroughly mixed by tilling, resulting in a mixture with about 30% clarifier solids by volume. Compaction should be accomplished to about 95% of the maximum dry density as determined by ASTM D 698 using a large tow-behind sheepsfoot or heavy segmented-pad roller. We recommend that you complete two test sections, one in an area of on-site brown, clayey silt and a second constructed with the imported clean to silty, fine-grained sand, prior to the start of production filling to evaluate and refine the recommended fill placement and compaction process. All work should be observed and tested by the geotechnical engineer-of-record.

### **Site Preparation and Grading**

We recommend the ground surface within the filled clarifier lagoon be stripped of trees, brush, and native vegetation; roots larger than ½ in. should be removed. In general, the stripping depth should be limited to that required to remove root wads associated with the trees and brush. Smaller plant roots can be tilled into the deeper portions of the structural fills; commonly the lower 2 ft. Stripping in the west lagoon should be limited to a depth of 0 to about 6 in.; however, greater or lesser amounts of stripping may be required locally. In our opinion, trees, brush, and coarse vegetation spoils should be removed from the site or chipped and stockpiled on-site for use as fill in landscaped areas. Upon completion of the site stripping and removal of the liners, the exposed subgrade of the lagoon and other areas to be filled should be observed by a qualified geotechnical engineer or engineering geologist. Any soft areas should be overexcavated to firm, undisturbed soil and backfilled with structural fill. It is unlikely that heavy equipment will be able to traffic the surface of the clarifier solids, particularly after they have been stripped. In our opinion, stripping and subsequent excavation of the clarifier solids will be most efficiently

accomplished with large hydraulic excavators and off-road haulers. Alternatively, it may be most advantageous to load the clarifier solids directly into scrapers to facilitate spreading of the wet clarifier solids on the surface of the loose fills for incorporation by tilling into a homogenous mass prior to compaction. It would appear that excavation of the clarifier solids should occur from north to south across the lagoon. It will be necessary to construct one or two ramps to the top of the dikes that form the lagoons so that you can readily access the portions of the site to be filled. The ramps should be constructed at slopes of 5H:1V or flatter of compacted structural fill in accordance with the recommendations presented below. The temporary side slopes of the ramps should be no steeper than 1.5H:1V or preferably flatter. The width of the ramps should be no less than 20 ft; assuming a single lane of traffic. If the liner and piping systems are removed prior to filling, the ramps can be left in place as part of the required structural fill.

Depending on the time of year, construction traffic may be limited to movement on granular work pads to avoid remodeling the exposed gravel surface that protects the fine-grained soils that likely make up the dikes that surround the lagoons. Generally, a minimum of 12 to 18 in. of relatively clean, granular material will be required to support construction traffic. If the subgrade is particularly soft, it may be advisable to place a separation membrane (Mirafi 140N, or equivalent) on the exposed subgrade prior to placement and compaction of the granular work pad.

### **Structural Fill**

In our opinion, on-site or imported sand and silt soils approved by the geotechnical engineer may be used to construct structural fills. However, fine-grained soils are sensitive to moisture content and should be placed only during the dry summer months. During the wet winter and spring months, fills should be constructed using imported, relatively clean, granular materials. All structural fills should extend to the limits of the filled area; side slopes should be over built and cut back to 2H:1V and vegetated to limit erosion.

Approved, organic-free, fine-grained soils used to construct structural fills should be placed in 8- to 12-in.-thick lifts (loose) and compacted using heavy tow-behind sheepsfoot or segmented-pad rollers to a density not less than 95% of the maximum dry density as determined by ASTM D 698. Fill placed in landscaped areas should be compacted to a minimum of 90% ASTM D 698. In our opinion, the moisture content of the imported sand and fine-grained, on-site soils should be controlled to minus (-) 3% of optimum to the optimum moisture content at the time of compaction. Some aeration and drying of the on-site, fine-grained soils may be required to meet the recommendations for compaction.

Imported granular materials used to construct structural fills or work pads during wet weather should have a maximum size of up to 6 in. and not more than about 5% passing the No. 200 sieve (washed analysis). The first lift of granular fill material placed over a silt subgrade should be in the range of 12 to 18 in. thick (loose). Subsequent lifts should be placed 12 in. thick (loose). All lifts should be compacted with a medium-weight (48-in.-diameter drum), smooth, steel-wheeled, vibratory roller until well keyed. Generally, a minimum of four passes with the roller are required to achieve compaction.

### **ADDITIONAL WORK**

Prior to construction of the fills, settlement plates should be installed with a spacing of about 400 ft within the areas to be filled. This will require installation of about 10 settlement plates. The monitoring schedule

will be documented in a separate memorandum once the rate of filling has been established. The survey data should be provided to the geotechnical engineer for evaluation.

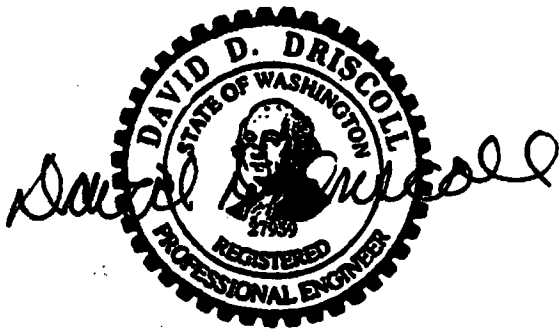
Following the consolidation of the site under the fill loads as indicated by the settlement plate data, we recommend completing a geotechnical investigation that is tailored to the proposed development. Included in this investigation should be an evaluation of the condition of the berms that formed the clarifier lagoons.

**LIMITATIONS**

This report has been prepared to aid you in the filling of the site to design subgrade elevation. The scope is limited by the fact that actual plans for development are indefinite; hence, only limited preliminary opinions are presented. Significant limitations are inherent in a study of this type, and additional site investigations must be conducted as specific construction plans and designs are developed. Nothing else is implied or intended.

Please contact the undersigned if you have any questions regarding this memorandum.

Submitted by,



Renews 7/2014

David D. Driscoll, PE  
Principal Consultant

A handwritten signature in black ink, appearing to read "Matthew S. Shanahan".

Matthew S. Shanahan, PE  
Associate

This document has been submitted electronically.

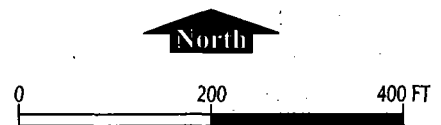
W1104 FILL EVALUATION MEMO





■ TEST PIT MADE BY GRI  
(MARCH 8, 2013)

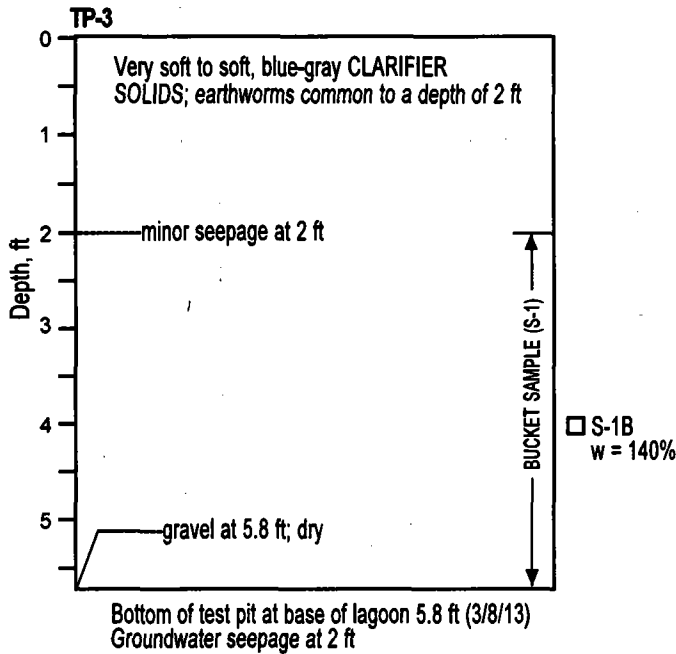
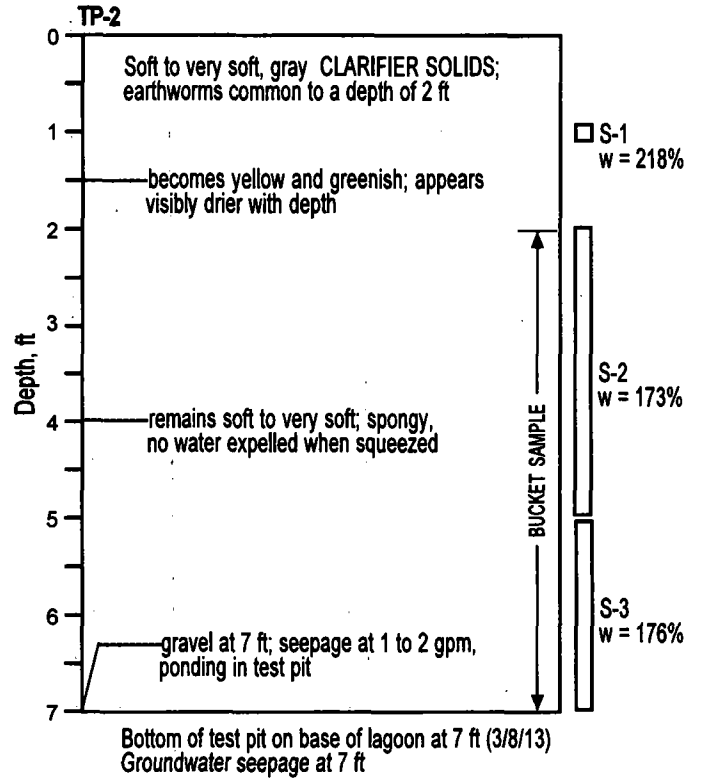
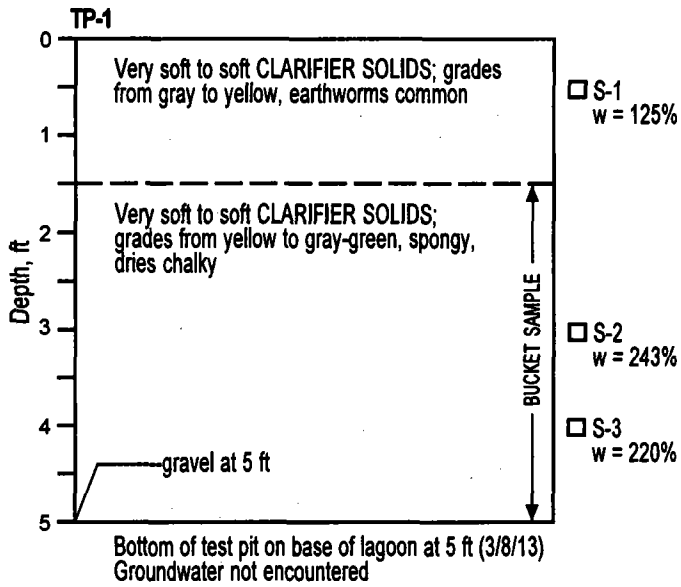
SITE MAP FROM GOOGLE EARTH, DATED AUGUST 15, 2012



**GRI** KEN LEAHY CONSTRUCTION, INC.  
43-ACRE VANCOUVER SITE

**SITE MAP**  
(WEST LAGOON)





**LEGEND**

- = GRAB SAMPLE
- w = NATURAL MOISTURE CONTENT
- GROUND SURFACE ELEVATIONS NOT AVAILABLE



**TEST PIT LOGS**

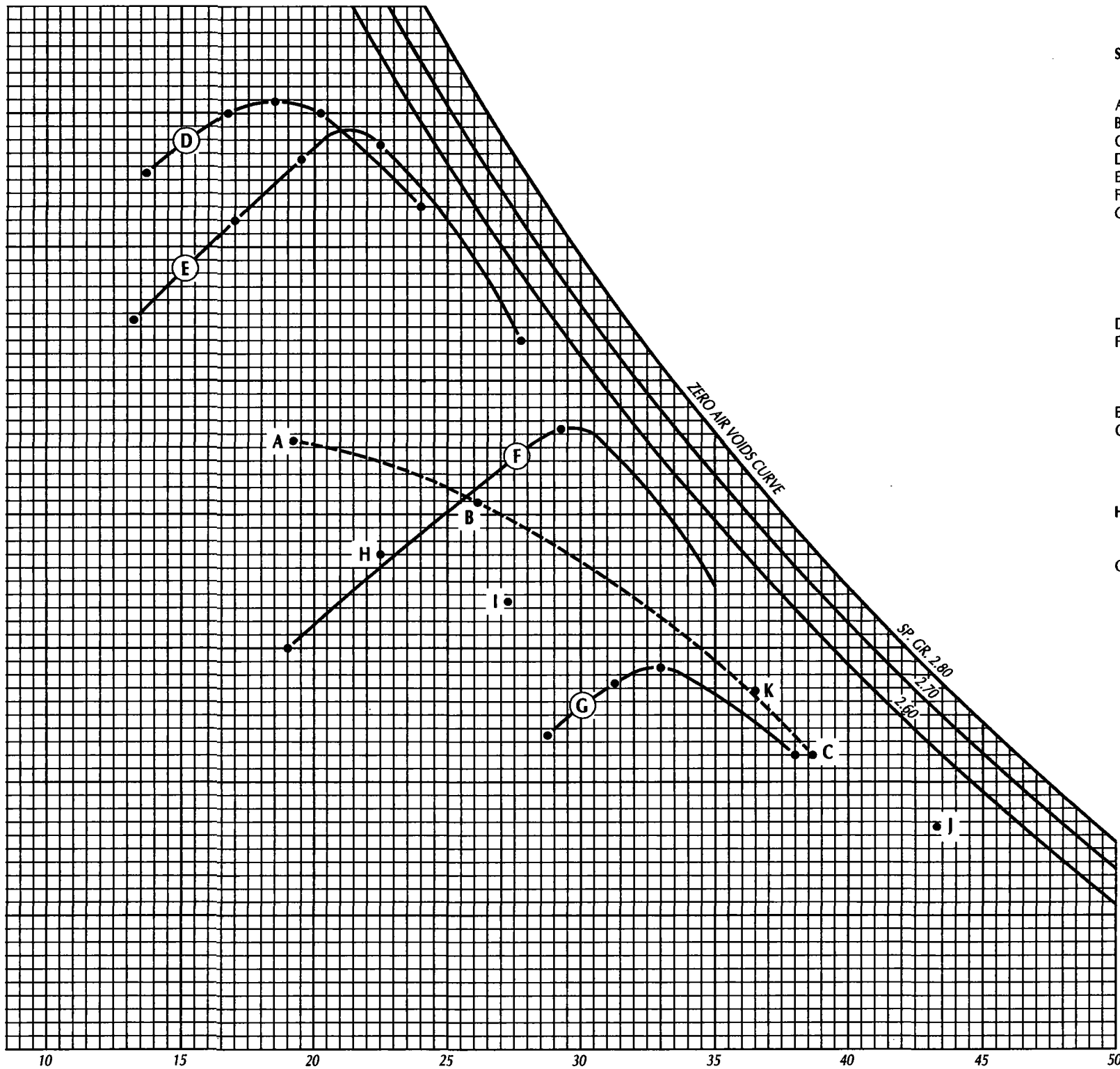
STANDARD PROCTOR COMPACTION, ASTM D 698-70

- A. SAND TO CLARIFIER SOLIDS RATIO = 3:1
- B. SAND TO CLARIFIER SOLIDS RATIO = 3:2
- C. SAND TO CLARIFIER SOLIDS RATIO = 3:3
- D. FULL CURVE SAND
- E. FULL CURVE SILT
- F. FULL CURVE SAND:CLARIFIER SOLIDS RATIO = 3:2
- G. FULL CURVE SILT:CLARIFIER SOLIDS RATIO = 3:2

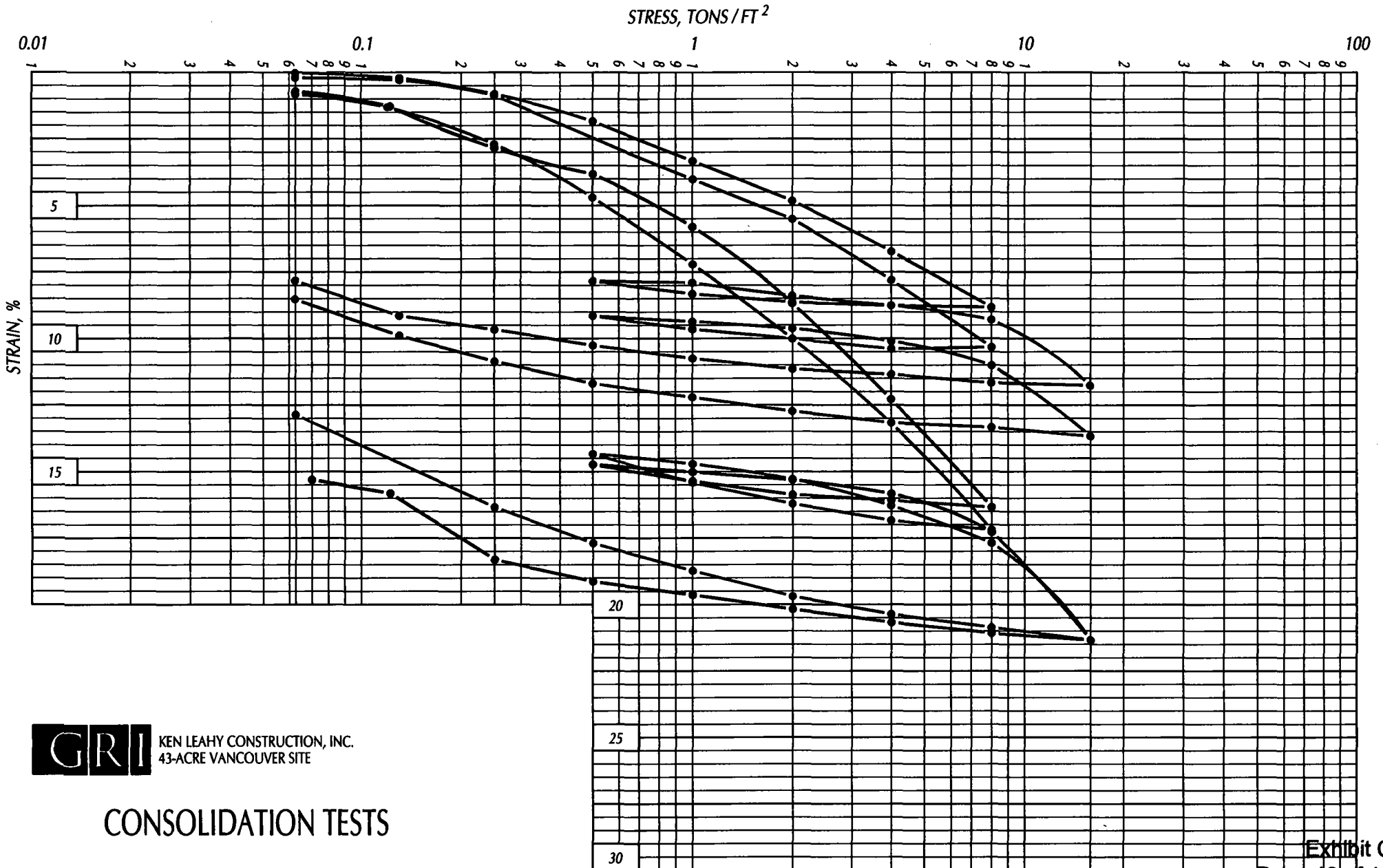
- D. SAND
  - F. 3:2 SAND:CLARIFIER SOLIDS RATIO
- DIFFERENCE
- E. ON-SITE BROWN SILT
  - G. 3:2 ON-SITE BROWN SILT:CLARIFIER SOLIDS RATIO
- DIFFERENCE

HARVARD MINATURE COMPACTOR

- CONSOLIDATION SAMPLES
- H ● 3:1 SAND:CLARIFI
  - I ● 3:2 SAND:CLARIFI
  - J ● 3:3 SAND:CLARIFI
  - K ● 3:2 SILT:CLARIFI



BORING	MOISTURE CONTENT, %		DRY UNIT WEIGHT, PCF		SOIL DESCRIPTION
	(INITIAL)	(FINAL)	(INITIAL)	(FINAL)	
H●	22.5	33	84	90	SAND TO CLARIFIER SOLIDS RATIO = 3:1
I●	27	33	82	89	SAND TO CLARIFIER SOLIDS RATIO = 3:2
J●	43	39	73	84	SAND TO CLARIFIER SOLIDS RATIO = 3:3
K●	36	29	79	93	BROWN SILT TO CLARIFIER SOLIDS RATIO = 3:2



**GRI** KEN LEAHY CONSTRUCTION, INC.  
43-ACRE VANCOUVER SITE

## CONSOLIDATION TESTS

**EXHIBIT D**

**[Anticipated Deferral Permit]**

After recording, return to:

Christine Kosydar  
Stoel Rives LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204

---

Tax Lots 151957-002; 151959-000; 151963-000;  
151969-000; 152372-004

Space Above for Recording Information Only

### **AGREEMENT AND COVENANT RUNNING WITH THE LAND**

An Agreement and Covenant to the City of Vancouver, a Municipal corporation and political subdivision of the State of Washington (“City”), from 2600 LLC, a Washington limited liability company, (“Landowner”), as owner of certain real property in Clark County, and legally described in Exhibit A which Landowner seeks approval of necessary permits to establish a light industrial complex, (“Property”), whereby Landowners and City mutually covenant that when the Property described in Exhibit A is granted shoreline approval and the necessary permits to establish a light industrial complex, the Property will be maintained as Industrial zoned property. As part of the shoreline approval process, Landowner will place material on the site that contains dioxins at approximately 1.5% of the allowed level for industrial sites, but slightly exceeds the level allowed for residential properties. Landowner therefore agrees that the Property shall be used solely for industrial purposes.

Landowner also agrees to restrict all but emergency vehicle access to LaFrambois Road so that commercial traffic does not access the Fruit Valley Neighborhood directly from the Property.

The Property is near the Fruit Valley neighborhood. To decrease the traffic impacts to the neighborhood as much as possible, Landowner agrees to restrict direct traffic access from the Property to the neighborhood except for emergency vehicles.

The “**Landowner**” of the Property:

**2600 LLC**

Assessors Serial Number 151957-002, 151959-000, 151963-000, 151969-000 and  
152372-004

Landowner covenants and agrees to the City of Vancouver on behalf of itself and all of its heirs, assigns and successors in interest into whose ownership the Property might pass, as follows; it being specifically agreed to that this is a covenant which touches, concerns, enhances, benefits and runs with the real property of Landowner described on Exhibit A.

1. **Title.** Landowner is the sole and exclusive owner of the real property situated in Clark County, Washington, legally described in Exhibit A attached hereto.
2. **Conditions.** The Property shall be subject to the following conditions:
  - a. Property listed above shall be limited to industrial use classifications as provided for in the current Vancouver Municipal Code (VMC) at 20.160.020(ID) attached hereto as Exhibit B. Nothing herein shall be interpreted to preclude the City Council from amending this section to further restrict the uses allowed on the Property. In such cases, the applicability of such further restrictions shall be governed by Washington statutory and common law concerning vested rights. This covenant is not intended to be a statutory development agreement.
  - b. Landowner will not provide access from the Property directly onto LaFrambois Road. However, the parties recognize that 26<sup>th</sup> Avenue adjacent to the Property is planned to be extended to the north from the Property and Landowner has no control over the extension. Therefore, Landowner cannot guarantee that there will not be access from 26<sup>th</sup> Avenue to LaFrambois Road.
  - c. There shall be no direct traffic access, except for emergency vehicles, to or from the Property and LaFrambois Road.
3. **Remedies.** This Covenant may be enforced by the City, Landowner, or any interested party for specific performance and/or injunctive relief or for other appropriate relief as may be deemed desirable by the party enforcing this agreement.
4. **Binding.** This Covenant shall remain in full force and effect until amended, modified or terminated by the action of Landowner and City in proceedings appropriate for that purpose. Nothing in this Covenant shall be construed as limiting in any way the authority of City, or its governmental successors, from approving amendments or modifications to this Covenant at the request of Landowner, its heirs, assigns or successors in interest. It is expressly provided that this Covenant may be amended, modified or terminated solely by the approval of the City, or its governmental successors, at the request of Landowner, its heirs, assigns or successors, and under no circumstances shall any approval by any other person or entity be required in order for Landowner to amend, modify or terminate this Covenant in whole or in part. This Agreement is not intended to create any third party beneficiaries.
5. **Filing.** This Agreement shall be filed with the Clark County Auditor so as to appear as a covenant within the chain of title for the Property.
6. **Severability.** If any provision of this Agreement, or the application of the provision to any person or circumstances, is declared invalid, then the rest of the



CHICAGO TITLE INSURANCE COMPANY

EXHIBIT A

DESCRIPTION:

ORDER NO: K160486

**Parcel I**

A portion of the Charles Proulx Donation Land Claim and the Francis LaFrambois Donation Land Claim lying within Sections 16, 20 and 21, Township 2 North, Range 1 East of the Willamette Meridian, Clark County, Washington. being more particularly described as follows:

COMMENCING at the Northeast corner of the George and Abigail Malick Donation Land Claim; thence North 56°09'46" West, along the North line of said Malick Donation Land Claim and the North line of the Charles Proulx. Donation Land Claim, 2305.65; thence South 11°40'50" West 31.96 feet to the Northwest corner of that tract of land leased by the City of Vancouver, as described in document recorded under Auditor's File No. 7903080070, Deed Records, Clark County, Washington, said point being the TRUE POINT OF BEGINNING of the tract herein described; thence South 11°40'50" West, along the West line of said City of Vancouver tract, 1452.41 feet to a ½ inch diameter iron rod; thence North 78°14'56" West, 525.00 feet to a ½ inch diameter iron rod; thence North 11°40'50" East, parallel with the West line of said City of Vancouver tract, 1665.55 feet to a ½ inch diameter iron rod; thence South 56°09'46" East, parallel with the North line of said Proulx Donation Land Claim, 566.86 feet to the TRUE POINT OF BEGINNING.

TOGETHER with that portion of the vacated LaFrambois Road Extension, vacated under Final Order of Vacation recorded October 27, 1971, under Auditor's File No. G 587418, records of Clark County, Washington, which would attach by operation of law.

EXCEPT any portion thereof conveyed to Clark County under Auditor's File No. 9007110005.

ALSO EXCEPT any portion thereof lying within the right of way of La Frambois Road.

**Parcel II**

A tract of land in the West half of Section 21, Township 2 North, Range 1 East of the Willamette Meridian, Clark County, Washington, being more particularly described as follows;

COMMENCING at the Northeast corner of the George and Abigail Malick Donation Land Claim; thence North 56°09'46" West, along the North line of said Malick Donation Land Claim and the North line of the Charles Proulx Donation Land Claim, 2305.65; thence South 11°40'50" West 31.96 feet to the Northwest corner of that tract of land leased by the City of Vancouver, as described in document recorded under Auditor's File No. 7903080070, Deed Records, Clark County, Washington; thence South 11°40'50" West, along the West line of said City of Vancouver tract, 1452.41 feet to a ½ inch diameter iron rod, said point being the TRUE Point of Beginning of the parcel herein described; thence North 78°14'56" West 525.00 feet to a ½ inch

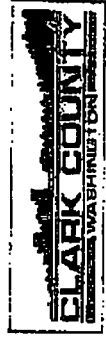


diameter iron rod; thence South  $11^{\circ}40'50''$  West, parallel with the West line of said City of Vancouver tract, 610.99 feet to the North right-of-way line of Lower River Road (being 75.00 feet from centerline), thence Southeasterly along the arc of a 1935.00 foot radius curve, concave Southerly, through a central angle of  $02^{\circ}08'11''$ , an arc distance of 74.01 feet; thence South  $35^{\circ}36'52''$  East, continuing along said right-of-way line, 450.01 feet; thence continuing along said centerline, along the arc of a 1835.00 radius curve, concave Northerly through a central angle of  $28^{\circ}58'28''$ , an arc distance of 927.96 feet; thence North  $11^{\circ}40'50'$  East, parallel with the West line of said City of Vancouver tract, 75.00 feet; thence South  $78^{\circ}19'10''$  East 30.00 feet; thence North  $11^{\circ}40'50''$  East 940.00 feet to the Southeast corner of said City of Vancouver tract; thence North,  $78^{\circ}19'10''$  West, along the South line of said City of Vancouver tract, 700.00 feet to the Southwest corner thereof; thence North  $11^{\circ}40'50''$  East, along the West line of said City of Vancouver tract, 383.83 feet to the Point of Beginning.

EXCEPT any portion thereof lying within the right of way of NW Lower River Road.

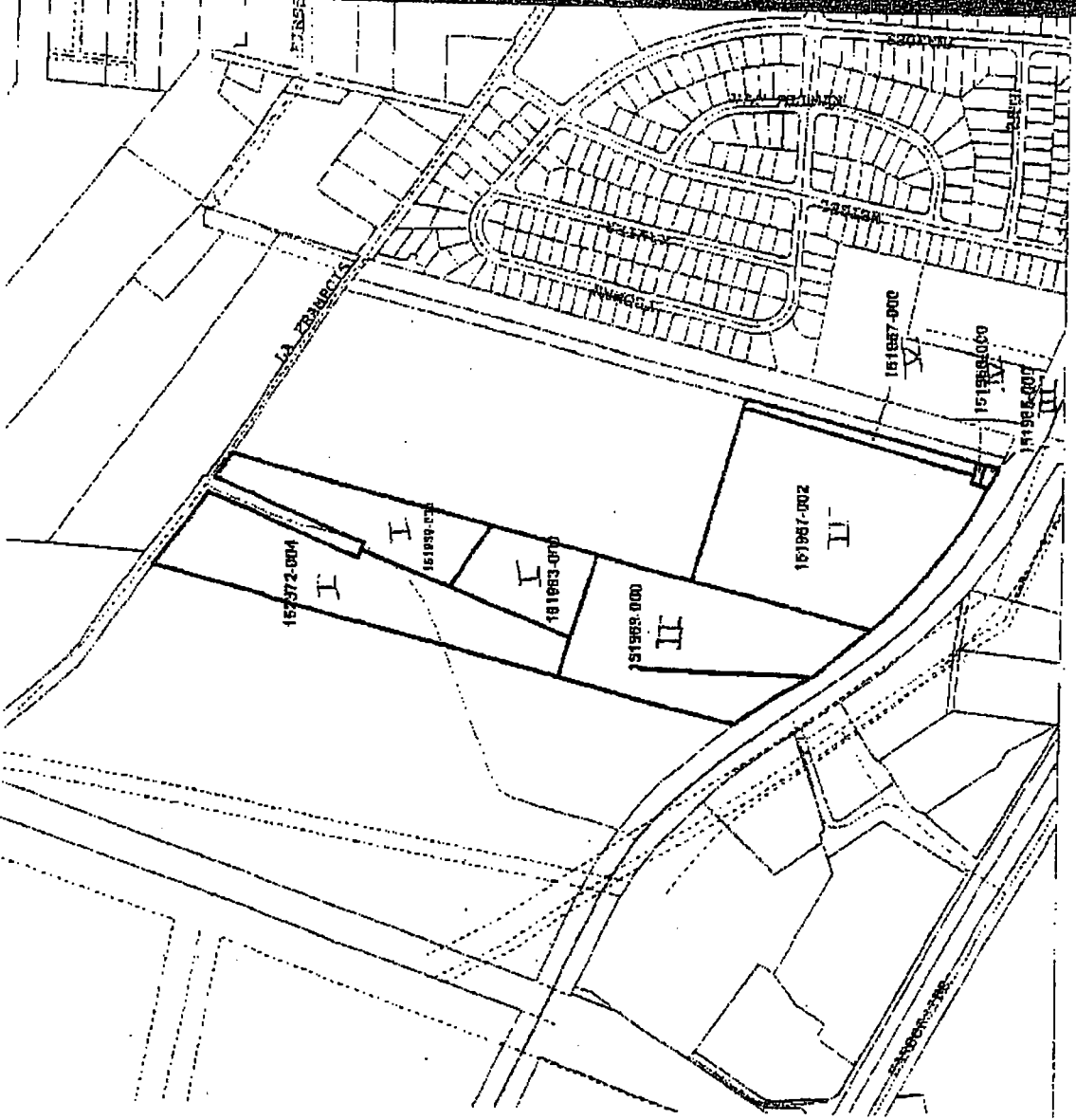
NW 1/4 of Section 21 T2R1E W8E

Major Roads  
Easements  
Roads



Set Dept Name in Preferences

Plot Date: Sep 12, 2011  
Map prepared by: dsw  
Information shown on this map was extracted from several sources. Clark County is not responsible for any inaccuracies that may be present.



(Scale 1:4535.66) 100 0 100 200 300 400 Feet

## EXHIBIT "B"

### D. Industrial use types

1. **Industrial Services.** Includes the repair and servicing of industrial and business machinery, equipment and/or products. Examples include welding shops; machine shops; sales, repair, storage, salvage or wrecking of heavy machinery, metal and building materials; towing and vehicle storage; auto and truck salvage and wrecking; heavy truck servicing and repair; tire recapping and retreading; truck stops; building, heating, plumbing or electrical contractors; exterminators; janitorial and building maintenance contractors where the indoor storage of materials is more than incidental to the office use [see 20,160.020(C)(6)(a) VMC]; fuel oil distributions; solid fuel yards; laundry, dry-cleaning and carpet cleaning plants; and photo-finishing laboratories.

2. **Manufacturing and Production.** Includes production, processing, assembling, packaging or treatment of semi-finished or finished products from raw materials or previously prepared materials or components. Manufacturing production is intended for the wholesale market rather than for direct sales. For specific list of activities in this category, see NAICS assignment adopted by reference to this title, Table 20.440-2

Table 20.430-2

<b>Manufacturing Uses</b>			<b>1L<sup>2</sup>:</b>
311	Food Manufacturing		
	3111	Animal food manufacturing	P
	3112	Grain and oilseed milling	
	3113	Sugar and confectionery product manufacturing	P
	3114	Fruit and vegetable preserving and specialty food	P
	3115	Dairy product manufacturing	P
	3116	Animal slaughtering and processing	X
	31161	Animal slaughtering and processing	X
	3117	Seafood product preparation and packaging	P
	3118	Bakeries and tortilla manufacturing	P

<b>Manufacturing Uses</b>			<b>IL<sup>2</sup></b>
	3119	Other food manufacturing	P
<b>312</b>	<b>Beverage and Tobacco Product Manufacturing</b>		
	3121	Beverage manufacturing	P
	31211	Soft drink and ice manufacturing	P
	312111	Soft drink manufacturing	P
	312112	Bottled water manufacturing	P
	312113	Ice manufacturing	P
	31212	Breweries	C
	31213	Wineries	P
	31214	Distilleries	C
	3122	Tobacco manufacturing	X
<b>313</b>	<b>Textile Mills</b>		
	3131	Fiber, yarn, and thread mills	X
	3132	Fabric mills	X
	3133	Textile and fabric finishing and fabric coating mills	X
<b>314</b>	<b>Textile Product Mills</b>		
	3141	Textile furnishings mills	X
	3149	Other textile product mills	X
<b>315</b>	<b>Apparel Manufacturing</b>		
	3151	Apparel knitting mills	P
	3152	Cut and sew apparel manufacturing	P
	3159	Apparel accessories and other apparel manufacturing	P
<b>316</b>	<b>Leather and Allied Product Manufacturing</b>		
	3161	Leather and hide tanning and finishing	X
	3162	Footwear manufacturing	P
	31621	Footwear manufacturing	P

<b>Manufacturing Uses</b>			<b>1L<sup>2</sup></b>
	3169	Other leather and allied product manufacturing	P
<b>321</b>	<b>Wood Product Manufacturing</b>		
	3211	Sawmills and wood preservation	X
	3212	Veneer, plywood, and engineered wood product	X
	3219	Other wood product manufacturing	P
<b>322</b>	<b>Paper Manufacturing</b>		
	3221	Pulp, paper, and paperboard mills	X
	3222	Converted paper product manufacturing	C
<b>323</b>	<b>Printing and Related Support Activities</b>		
	3231	Printing and related support activities	P
<b>324</b>	<b>Petroleum and Coal Products Manufacturing</b>		
	3241	Petroleum and coal products manufacturing	X
<b>325</b>	<b>Chemical Manufacturing</b>		
	3251	Basic chemical manufacturing	X
	3252	Resin, synthetic rubber, and artificial and synthetic fibers and filaments manufacturing	X
	3253	Pesticide, fertilizer, and other agricultural chemical manufacturing	X
	3254	Pharmaceutical and medicine manufacturing	P
	3255	Paint, coating, and adhesive manufacturing	X
	3256	Soap, cleaning compound, and toilet preparation	1'
	3259	Other chemical product and preparation manufacturing	X
	32591	Printing ink manufacturing	X
	32592	Explosives manufacturing	X
	32599	All other chemical product and preparation manufacturing	X
	325991	Custom compounding of purchased resins	C
	325992	Photographic film, paper, plate, and chemical manufacturing	X

<b>Manufacturing Uses</b>			<b>IL<sup>2</sup></b>
	325998	All other miscellaneous chemical product and preparation manufacturing	X
<b>326</b>	<b>Plastics and Rubber Products Manufacturing</b>		
	3261	Plastics product manufacturing	X
	32611	Unsupported plastics film, sheet, and bag manufacturing	X
	32612	Plastics pipe, pipe fitting, and unsupported profile shape manufacturing	X
	32613	Laminated plastics plate, sheet, and shape manufacturing	X
	32614	Polystyrene foam product manufacturing	X
	32615	Urethane and other foam product (except polystyrene) manufacturing	X
	32616	Plastics bottle manufacturing	X
	32619	Other plastics product manufacturing	X
	3262	Rubber product manufacturing	X
	32621	Tire manufacturing	X
	326211	Tire manufacturing (except retreading)	
	326212	Tire retreading	X
	32622	Rubber and plastics hoses and belting manufacturing	C
	32629	Other rubber product manufacturing	C
	326291	Rubber product manufacturing for mechanical use	C
	326299	All other rubber product manufacturing	P
<b>327</b>	<b>Nonmetallic Mineral Product Manufacturing</b>		
	3272	Glass and glass product manufacturing	P
	3273	Cement and concrete product manufacturing	X
	3274	Lime and gypsum product manufacturing	X
	3279	Other nonmetallic mineral product manufacturing	X
<b>331</b>	<b>Primary Metal Manufacturing</b>		

<b>Manufacturing Uses</b>			<b>IL<sup>2</sup></b>
	3311	Iron and steel mills and ferroalloy manufacturing	X
	3312	Steel product manufacturing from purchased steel	X
	3313	Alumina and aluminum production and processing	X
	3314	Nonferrous metal (except aluminum) production and	X
	3315	Foundries	X
<b>332</b>	<b>Fabricated Metal Product Manufacturing</b>		
	3321	Forging and stamping	C
	33 <sup>2</sup> 2	Cutlery and hand tool manufacturing	'
	3323	Architectural and structural metals manufacturing	C
	3324	Boiler, tank, and shipping container manufacturing	C
	3325	Hardware manufacturing	C
	3326	Spring and wire product manufacturing	C
	3327	Machine shops: turned product; and screw, nut, and bolt manufacturing	C
	3328	Coating, engraving, heat treating, and allied activities	P
	33281	Coating, engraving, heat treating, and allied activities	P/X <sup>1</sup>
	3329	Other fabricated metal product manufacturing	P
	33291	Metal valve manufacturing	P
	33299	All other fabricated metal product manufacturing	P
	332991	Ball and roller bearing manufacturing	P
	332992	Small arms ammunition manufacturing	X
	332993	Ammunition (except small arms) manufacturing	X
	332994	Small arms manufacturing	X
	332995	Other ordnance and accessories manufacturing	X
	332996	Fabricated pipe and pipe fitting manufacturing	P
	332997	Industrial pattern manufacturing	P
	332998	Enameled iron and metal sanitary ware manufacturing	P

<b>Manufacturing Uses</b>			<b>IL<sup>2</sup></b>
	332999	All other miscellaneous fabricated metal product	P
<b>333</b>	<b>Machinery Manufacturing</b>		
	3331	Agriculture, construction, and mining machinery	C
	3332	Industrial machinery manufacturing	C
	3333	Commercial and service industry machinery manufacturing	C
	3334	Ventilation, heating, air-conditioning, and commercial refrigeration equipment manufacturing	C
	3335	Metalworking machinery manufacturing	C
	3336	Engine, turbine, and power transmission equipment manufacturing	C
	3339	Other general purpose machinery manufacturing	C
<b>334</b>	<b>Computer and Electronic Product Manufacturing,</b>		
	3341	Computer and peripheral equipment manufacturing	P
	3342	Communications equipment manufacturing	P
	3343	Audio and video equipment manufacturing	P
	3344	Semiconductor and other electronic component	
	3345	Navigational, measuring, electromedical, and control instruments	P
	3346	Manufacturing and reproducing magnetic and optical media.	P
<b>335</b>	<b>Electrical Equipment, Appliance, and Component Manufacturing</b>		
	3351	Electric lighting equipment manufacturing	P
	3352	Household appliance manufacturing	P
	3353	Electrical equipment manufacturing	P
	3359	Other electrical equipment and component manufacturing	P
<b>336</b>	<b>Transportation Equipment Manufacturing</b>		
	3361	Motor vehicle manufacturing	X
	3362	Motor vehicle body and trailer manufacturing	X



<b>Manufacturing Uses</b>			<b>IL<sup>2</sup></b>
	3363	Motor vehicle parts manufacturing	P
	3364	Aerospace product and parts manufacturing	X
	3365	Railroad rolling stock manufacturing	X
	3366.	Ship and boat building	X
	33661	Ship and boat building	X
	336611	Ship building and repairing	X
	336612	Boat building	P
	3369	Other transportation equipment manufacturing	
	33699	Other transportation equipment manufacturing	
	336991	Motorcycle, bicycle, and parts manufacturing	P
	336992	Military armored vehicle, tank, and tank component manufacturing	X
	336999	All other transportation equipment manufacturing	X
<b>337</b>	<b>Furniture and Related Product Manufacturing</b>		
	3371	Household and institutional furniture and kitchen cabinet manufacturing	P
	3372	Office furniture (including fixtures) manufacturing	P
	3379	Other furniture related product manufacturing	P
<b>339</b>	<b>Miscellaneous Manufacturing</b>		
	3391	Medical equipment and supplies manufacturing	P
	3399	Other miscellaneous manufacturing	P

<sup>1</sup> Electroplating and related uses not permitted.

3. Railroad. Yards. A terminus of several light or heavy railroad lines where the loading, unloading, transshipment, switching, maintenance, and storage of rail cars is undertaken.

4. Research and Development. Facility featuring a mix of uses including office, research laboratories, and prototype manufacturing. If the use contains no on-site manufacturing component, then it is considered General Office (see 20.160.020(C)(6)(a) VMC).

5. Warehouse/Freight Movement. Uses involved in the storage and movement of large quantities of materials or products indoors and/or outdoors; associated with significant truck and/or rail traffic. Examples include free-standing warehouses associated with retail furniture or

appliance outlets; household moving and general freight storage; cold storage plants/frozen food lockers; weapon and ammunition storage; major wholesale distribution centers; truck, marine and air freight terminals and dispatch centers; bus barns; grain terminals; and stockpiling of sand, gravel, hark dust or other aggregate and landscaping materials.

6. **Waste-Related.** Uses that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes or uses that manufacture or produce goods or energy from the composting of organic material. Examples include: recycling/garbage transfer stations; landfills; composting, energy recovery and sewage treatment plants; and hazardous waste handling and transfer facilities that do not treat or dispose of hazardous waste, as that term is defined in the Code of Federal Regulations, Title 40, Part 261. Such a facility that has regional or state-wide significance is classified as an Essential Public Facility by the provisions of the Growth Management Act. Hazardous waste or disposal facilities are not included in this classification and are therefore not permitted in the City of Vancouver. Provided 10-day hazardous waste handling and transfer facilities, excluding facilities handling radioactive or high explosive materials, are allowed, provided such facilities: a) do not repackage waste (except as necessary to address damaged or improper packaging); b) are located at least 200' from any residential zoning district; and c) do not store hazardous wastes (except for "universal wastes," as that term is defined in Code of Federal Regulations, Title 40, Part 273) for more than ten days.

7. **Wholesale Sales.** Involves sales, leasing or rental of equipment or products primarily intended for industrial, institutional or commercial businesses. Businesses may or may not be open to the general public, but sales to the general public are limited. Examples include the sale or rental of machinery, equipment, building materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment, and store fixtures; mail order houses; and wholesalers of food, clothing, auto parts, and building hardware.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

CLARK COUNTY, WASHINGTON, a  
political subdivision of the State of Washington,

Plaintiff,

v.

OFFICEMAX, INCORPORATED, a Delaware  
corporation; BOISE CASCADE COMPANY, a  
Delaware corporation; BOISE CASCADE  
HOLDINGS, LLC, a Delaware limited liability  
company; BOISE WHITE PAPER, L.L.C., a  
Delaware limited liability company; 2600 LLC,  
a Washington limited liability company,

Defendants.

No.

COMPLAINT FOR DECLARATORY  
JUDGMENT AND WRIT OF  
MANDAMUS

COMES NOW, the Plaintiff, Clark County, Washington, and alleges as follows:

I. INTRODUCTION

1. Plaintiff Clark County, a political subdivision of the State of Washington, seeks a declaratory judgment determining the rights, status and obligations of the Defendants with respect to the ownership, operation, and obligations to implement the closure and post-closure plans of a limited purpose landfill commonly referred to as the "*Rufener Landfill*." As alleged in this complaint, LaFrambois Properties, L.L.C., ("*LP*") and Defendants, exclusive of 2600 LLC,

1 at various times, have been either the owners or operators of the Rufener Landfill or guarantors  
2 of closure and post-closure obligations. Clark County issued a conditional use permit and  
3 limited purpose landfill permits to LP and Defendants, exclusive of 2600 LLC, as owners or  
4 operators of the Rufener Landfill. These permits require implementation of the closure/post-  
5 closure plan required by the conditional use permit and the limited purpose landfill permits.  
6 Defendants, together with LP, exclusive of 2600 LLC, have failed to renew permits and  
7 implement closure and post-closure plans as required by the permits issued by the County and  
8 state and local regulations. The Boise Entities and LP disagree as to which of them is  
9 responsible for obtaining the permits and implementing closure and post-closure plans. In July  
10 2013, defendant 2600 LLC acquired title to the Rufener Landfill and certain adjacent property  
11 by virtue of a Deed in Lieu of Foreclosure from LP. In addition to asking the Court to declare  
12 Defendants' duties, Plaintiff additionally seeks a writ of mandamus requiring the execution of  
13 those duties.  
14  
15

## 16 II. JURISDICTION AND VENUE

17  
18 2. The Rufener Landfill is located in Clark County, Washington. Each of the Boise  
19 Entities conduct or have conducted business within Clark County, Washington in conjunction  
20 with the Rufener Landfill.  
21

22 3. The Clark County Superior Court has subject matter jurisdiction over this  
23 proceeding pursuant to RCW 2.08.010. Clark County is the appropriate venue pursuant to RCW  
24 4.12.025.  
25

## 26 III. THE DEFENDANTS

27 4. Boise Cascade Corporation ("BCC") is a Delaware corporation (and is now  
28 named OfficeMax, Incorporated) which operated certain facilities within Clark County,  
29

1 Washington. As more specifically alleged below, BCC leased certain land, including the  
2 Rufener Landfill, and was the owner and operator of the Rufener Landfill.

3 5. On November 1, 2004, the legal name of BCC was changed to "OfficeMax,  
4 Incorporated" ("OMX").

5 6. Boise Cascade Holdings, LLC, ("BCH") is a Delaware limited liability company.  
6 As more specifically alleged below, BCH pledged its corporate guarantee to ensure the  
7 implementation of the closure/post-closure plan for the Rufener Landfill. Boise Cascade  
8 Company, a Delaware Corporation formerly known as Boise Cascade LLC, a Delaware limited  
9 liability company, is a subsidiary of BCH. Until February 22, 2008, Boise White Paper, L.L.C.,  
10 a Delaware limited liability company ("BWP"), was a wholly owned subsidiaries of BCH.

11 Where stated in this Complaint, "Boise Entities" means OfficeMax Incorporated, a Delaware  
12 corporation; formerly known as Boise Cascade Corporation, a Delaware corporation, its present  
13 or past subsidiaries, partners, officers, directors, and shareholders; Boise Cascade Company, a  
14 Delaware corporation, formerly known as Boise Cascade, LLC, a Delaware limited liability  
15 company; Boise Cascade Holdings, LLC, a Delaware limited liability company; and, Boise  
16 White Paper LLC, a Delaware limited liability company.

17 7. LaFrambois Properties LLC ("LP") is a Delaware limited liability company. As  
18 more specifically alleged below, LP was the holder of the fee title to the Rufener Landfill and the  
19 adjoining wastewater lagoon.

20 8. The Hough Foundation ("HF") is a Washington not-for-profit corporation. HF is  
21 the sole owner of LP.  
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1 Administrative Code and to obtain a solid waste disposal permit from the Southwest Washington  
2 Health District ("Health District").

3 13. In 1989, BCC applied to the Health District for a solid waste disposal permit. As  
4 part of that permit application, BCC submitted an operation plan and a closure and post-closure  
5 plan for the Rufener Landfill. BCC's operation plan for the Rufener Landfill called for the  
6 landfill to be developed in three phases. Each phase consisted of developing a separate landfill  
7 (or "cell") on approximately 10 acres of the Site. Only the 10 acre parcel (tax parcel number  
8 151969-000) had a landfill constructed on it.

9  
10 14. The closure and post-closure plan calls for the closure of the Landfill by the  
11 placement of cover material and a liner system as a top cap over the Landfill; the installation of a  
12 passive gas collection network; and hydroseeding and fertilization of the top cap to establish a  
13 vegetative crop for erosion control. Following the closure of the landfill, BCC proposed post-  
14 closure maintenance activities consisting of water quality monitoring, gas monitoring, leachate  
15 treatment and disposal and operating staff.

16  
17  
18 15. From 1990 to mid-2006, the Health District (and after 2002, the successor Clark  
19 County Health Department, collectively, the "Health Department") issued limited purpose  
20 landfill permits to for the Rufener Landfill. During periods of the time 1990 - 2006, some or all  
21 of the Boise Entities have been the owners or operators of the Rufener Landfill and the owners or  
22 operators of a premise, business establishment or industry that generated or accumulated solid  
23 waste. These permits required compliance with state and local regulations applicable to limited  
24 purpose landfills including, but not limited to, compliance with the operation plan and closure  
25 and post closure plan. WAC 173-350-025 requires owners or operators of premise, business  
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1 establishment or industry that generate or accumulate solid waste to make satisfactory legal  
2 arrangement for the handling of all such solid waste.

3 16. On February 12, 1999, the Rufeners granted BCC an option to purchase 18.79  
4 acres north of the Site (the "Option").

5 17. In 1999, BCC created LP and, until June 29, 2001, BCC was the sole member and  
6 owner of LP. On February 19, 1999, BCC assigned its interest in the Option to LP.  
7

8 18. On February 17, 1999, the Elmer Rufener Credit Shelter Trust conveyed 24.49  
9 acres of the Site to LP. This 24.49 acres of property consisted of the southern approximate 10  
10 acres of the Rufener Landfill and the easterly adjacent 14.5 acres on which the wastewater  
11 lagoon is located. This conveyance was made without the review or approval of the Health  
12 Department.  
13

14 19. On June 29, 2001, BCC conveyed all of its interest in LP to the Community  
15 Foundation for Southwest Washington. In July, 2001, the Community Foundation for Southwest  
16 Washington conveyed all of its interest in LP to the Hough Foundation. These conveyances  
17 were made without the review or approval of the Health Department.  
18

19 20. From 1990 to October 29, 2004, BCC applied for and received a limited purpose  
20 landfill permit as the facility owner and operator of the Rufener Landfill.  
21

22 21. In 2005, the Hough Foundation as facility owner and Boise Cascade LLC, as  
23 facility operator, applied for and received a limited purpose landfill permit for the Rufener  
24 Landfill. This permit expired February 28, 2006.

25 22. As part of the application for the issuance of a limited purpose landfill permit in  
26 2005, BCH and BWP issued a corporate guarantee to Clark County guaranteeing implementation  
27 of the closure and post-closure plans for the Rufener Landfill.  
28  
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1           23.     In the summer of 2004, all clarifier solids were removed from the adjacent  
2 wastewater lagoon, eliminating the need for the Rufener Landfill to remain open. During this  
3 time, the Health Department received a solid waste permit application to convert the Rufener  
4 Landfill to a construction, demolition and land-clearing (“CDL”) landfill. However, this  
5 application was withdrawn on February 8, 2006. On February 17, 2006, the Health Department  
6 made demand upon BCC to implement the closure and post-closure plans for the Rufener  
7 Landfill. This demand was made pursuant to WAC 173-350-400(6)(b), which requires owners  
8 and operators of landfills to implement closure plans after receipt of the final volume of waste to  
9 be deposited at that landfill. The Rufener Landfill was only permitted to receive waste from the  
10 primary clarifier and the adjacent wastewater treatment lagoon.  
11

12  
13           24.     Since February, 2006, the Health Department has made repeated demands upon  
14 LP and Boise Entities to implement the closure and post-closure plans for the Rufener Landfill.  
15 The Health Department has offered LP and Boise Entities the opportunity to amend and  
16 implement an amended closure and post-closure plans for the Rufener Landfill. Despite repeated  
17 demands to either implement the closure and post-closure plans or submit applications to amend  
18 those plans, LP and Boise Entities have failed to perform their obligations to implement the  
19 closure and post-closure plans for the Rufener Landfill.  
20

21           25.     Although the limited purpose landfill permit for the Rufener Landfill expired on  
22 February 28, 2006, neither LP and Boise Entities have applied to renew their limited land  
23 purpose landfill permit. Pursuant to Chapter 24.12 Clark County Code (“CCC”), it is unlawful to  
24 own or operate a landfill within Clark County without applying for and obtaining a permit.  
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V. RELIEF REQUESTED

Based upon the foregoing allegations of this Complaint, the Plaintiff requests relief as follows:

26. Pursuant to the provisions of the Uniform Declaratory Judgment Act, Chapter 7.24, RCW, the Plaintiff asks the Court to declare the rights, status and responsibilities of the Defendants, with respect to the ownership, operation, and obligations to implement closure and post-closure plans for the Site. Pursuant to RCW 7.24.080, the Plaintiff requests the Court to provide further relief as may be necessary or proper.

27. Pursuant to Chapter 7.16, RCW and CCC 24.12.220, the Plaintiff requests the Court to issue a Writ of Mandamus compelling the Defendants to perform the acts which the Court declares they have a duty to perform with respect to the ownership, operation and implementation of closure and post-closure activities of the Rufener Landfill.

28. The Plaintiff requests the Court enter a judgment for its reasonable attorney's fees and costs incurred herein.

29. The Plaintiff requests the Court to grant such other relief as may be deemed just and equitable.

DATED this \_\_\_\_\_ day of August, 2013.

Tony Golik, Clark County Prosecuting Attorney

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Lawrence Watters, WSBA #7454  
Sr. Deputy Prosecuting Attorney  
Attorneys for Plaintiff Clark County